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Supreme Court, U. S.
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Supreme Court of the United States

No.....

Robinson Terminal Warehouse Corp.
~~HERBERT BRYANT, INC., ET AL.,~~
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

A. C. Epps
Charles F. Midkiff
Christian, Barton, Epps, Brent & Chappell
Richmond, Virginia 23219
Of Counsel to Robinson Terminal Warehouse Corp.

John S. Stump
Boothe, Prichard & Dudley
Alexandria, Virginia 22313
Of Counsel to Virginia Electric and Power Co., Robinson Realty Corp., Sand and Gravel Properties, Inc.

Cyril D. Calley
Alexandria, Virginia 22314
Of Counsel to City of Alexandria

Albert E. Brault
Brault, Graham, Scott & Brault
Washington, D. C. 20036
Of Counsel to Old Dominion Boat Club

John J. Adams
Hunton & Williams
Washington, D. C. 20006
Of Counsel to Robinson Realty Corporation and Virginia Electric and Power Company

Commonwealth of Virginia
Andrew P. Miller
Attorney General of Virginia
Anthony F. Troy
Chief Deputy Attorney General
John Hardin Young
Assistant Attorney General

W. Curtis Sewell
Alexandria, Virginia 22313
Of Counsel to Norton and Co.

Jo V. Morgan, Jr.
Whiteford, Hart, Carmody & Wilson
Washington, D. C. 20005
Of Counsel to The Texas Co.

B. G. Stephenson
Arlington, Virginia 22202
Of Counsel to Thomas H. Andrews, Inc.

Yvonne F. Weight
Alexandria, Virginia 22314
Of Counsel to Russell S. and Flavienne G. Crenshaw

Robert L. Murphy
Alexandria, Virginia 22314
Of Counsel to Potomac Arms Corp. and John C. Richards

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PRELIMINARY STATEMENT

Petitioners consist of the Commonwealth of Virginia as well as thirteen parties who are record owners of waterfront land which is located entirely within Virginia.[1] Petitioners (hereinafter "Virginia Land Owners") pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on July 6, 1976.

[1]Petitioners are the Commonwealth of Virginia, Robinson Terminal Warehouse Corporation, City of Alexandria, Norton and Company, Inc., The Texas Company, Virginia Electric and Power Company, Robinson Realty Corporation, Sand and Gravel Properties, Inc., Potomac Arms Corporation, John C. Richards, Old Dominion Boat Club, Thomas H. Andrews, Inc., Russell S. Crenshaw and Flavienne G. Crenshaw. The property owned by Petitioners is located on the Alexandria waterfront westward (i.e., landward) of the pierhead line from Gibbon Street on the south to Second Street on the north.

OPINION BELOW

The opinion of the court below which as of this date has not been reported in the official reports is appended hereto as Exhibit A.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are appended hereto and include:

(1) Act of July 16, 1790, 1 Stat. 130 (Exhibit B)
(2) An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35 (1846) (Exhibit C)
(3) Act of April 27, 1912, 37 Stat. 93 (Exhibit D)
(4) Act of October 31, 1945, 59 Stat. 552 (Exhibit E)

JURISDICTION OF THE COURT

The judgment of the court below was entered July 6, 1976. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. May the District Court for the District of Columbia exercise *in rem* jurisdiction over land which all parties agree is situated beyond its territorial boundaries?

2. Does the Act of April 27, 1912, 37 Stat. 93, or the Act of October 31, 1945, 59 Stat. 552, confer jurisdiction on the District Court for the District of Columbia to hear a quiet title action involving lands belonging to Virginia Land Owners and located entirely within the Commonwealth of Virginia?

3. Does the United States Court for the Eastern District of Virginia have exclusive or concurrent jurisdiction to hear

a quiet title action involving the lands in question which are located solely within the Commonwealth of Virginia?

STATEMENT OF THE CASE

A. Historical Background

Alexandria's waterfront was part of land ceded by Virginia to the federal government to form the District of Columbia. Maryland likewise ceded land to the federal government which cession was accepted by Congress in 1790 (1 Stat. 130) and ratified by Maryland in 1791 (2 Kilty, Laws of Maryland, Ch. 45). In accepting the cessions of territory, Congress authorized the President to appoint commissioners who would survey the district so created and have the power to purchase and accept such land as the President should deem proper for the seat of the federal government.

From 1791 until 1846, a portion of the city of Alexandria, including its waterfront, was part of the District of Columbia.

In 1846, Alexandria County of the District of Columbia was retroceded to the State of Virginia. The Act of Retrocession, July 9, 1846, 9 U.S. Stat. at L. 35, recited in pertinent part that

> [W]ith the assent of the people of the county and town of Alexandria . . . that portion of the District of Columbia ceded to the United States by the State of Virginia and all the rights and jurisdiction therewith ceded . . . are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.
>
> Sec. 2. And be it further enacted, That nothing herein contained shall be construed to vest in the State of Virginia any right of property . . . in the soil of the territory hereby receded, so as to affect the rights of individuals or corporations therein. . . .

From its founding in 1749 Alexandria developed into a thriving port and with the Virginia/District of Columbia boundary being dependent upon the ever changing Potomac River, uncertainty arose as to the location of this boundary.

In 1912 Congress passed an Act (37 Stat. 93) authorizing the Attorney General to institute suits in the United States District Court for the District of Columbia to establish and make clear title to land located *in the District of Columbia*. Until 1945, however, it was highly uncertain as to what land on the Virginia side of the Potomac River was or was not situated in the District of Columbia.

The boundary between Virginia and the District of Columbia continued to remain uncertain even though countless hours of investigation were expended by a Boundary Commission established by act of Congress, until Congress in 1945 legislatively clarified the boundary between these two sovereignties [Exhibit E].

B. Material Proceedings to Date

This is an appeal from a judgment which reversed a decision of the United States District Court for the District of Columbia. The District Court (Corcoran, J.) entered an order on January 29, 1975 granting Virginia Land Owners' motions to dismiss for lack of subject matter jurisdiction.

By complaint filed on December 21, 1973 the United States government brought suit in the United States District Court for the District of Columbia to quiet title to certain land lying along the Alexandria waterfront within the Commonwealth of Virginia.

In its complaint, the United States invoked the jurisdiction of the District of Columbia Court under 28 U.S.C. § 1345, the Act of April 27, 1912 (37 Stat. 93) (hereinafter

"1912 Act") and the Act of October 31, 1945 (59 Stat. 552) (hereinafter "1945 Act").[2] The full text of the 1912 Act (Exhibit D) and of the 1945 Act (Exhibit E) is appended hereto.

By order entered on August 6, 1974, the District Court authorized the Commonwealth of Virginia to intervene in this action and the Commonwealth of Virginia joins herein as a co-petitioner.

After briefs and argument, the District Court on December 9, 1974 determined that it "lacks jurisdiction to hear and determine a quiet title action to any land situated within the territorial limits of Virginia." (386 F.Supp. 1287, 1289, Exhibit H attached). In its decision, the District Court concluded that, while the 1912 Act and the 1945 Act authorized the District Court to hear quiet title actions involving property located in the District of Columbia, these statutes did not confer such jurisdiction with respect to land situated in the Commonwealth of Virginia. The court further noted that any other interpretation of these statutes would represent "a drastic departure from that fundamental principle of law that a Court has *in rem* jurisdiction only over lands located within its territorial boundaries". (386 F.Supp. 1287, 1292). The District Court further stated:

> It is the Government's position that § 103 of the 1945 Act explicitly reserves exclusive jurisdiction in this Court over the disputed lands notwithstanding that they lie within the territorial limits of Virginia because formerly the "very lands here in controversy were

[2]28 U. S. C. § 1345 is a general grant of jurisdiction to district courts pursuant to Art. 3, § 1 of the Constitution. Since it does not confer jurisdiction upon a specific district court, that statute or its application is not at issue.

> within the territorial limits of this Court for quiet title actions brought by the United States," by virtue of the 1912 Act and pertinent decisions of the Supreme Court. The defendants, on the other hand, contend that the 1945 Act does no more than preserve this Court's jurisdiction over lands described in the Act of 1912, *i.e.*, land in the District of Columbia. They bolster this assertion by noting that Section 202 of the 1945 Act extends the jurisdiction of the District Court for the Eastern District of Virginia over the area within which the disputed lands lie, and that it would be unreasonable to deprive that Court of jurisdiction over such lands.
>
> The Court's view of § 103 is that it is a legislative reaffirmation of the 1912 Act, that the term "said Act" clearly refers to the 1912 Act, and that the "lands" referred to in § 103 are those lands "in the District of Columbia" as specified by the 1912 Act. This conclusion is consistent with the terms of § 202, which amended the then-Judicial Code so as to embrace within the boundaries of the District Court for the Eastern District of Virginia the land ceded to Virginia by §§ 101 and 102 of the 1945 Act. (386 F. Supp. 1287, 1291).

After rendering its decision the District Court, pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure, entered an order on January 29, 1975 (Exhibit F attached) dismissing thirty defendants whose property the United States conceded was located solely within Virginia. From this decision the United States appealed.

The Court of Appeals reversed the District Court's decision and held that the 1912 and 1945 Acts conferred *exclusive* jurisdiction on the District of Columbia federal courts to hear quiet title actions involving lands located entirely within Virginia. That decision requires review by this Court because it emasculates the jurisdiction of state and federal courts in Virginia over local title matters.

The Court of Appeals' decision also leaves in doubt the jurisdiction of Virginia courts to deal with landlord-tenant controversies, contract disputes, common law actions of trespass and related issues involving the entire Alexandria waterfront. That is, the Court of Appeals held that the District of Columbia federal courts in conjunction with the quiet title suit could hear landlord-tenant controversies and other ancillary matters during the pendency of the principal litigation. The City of Alexandria, a co-petitioner herein, has filed a separate Petition for Writ of Certiorari to this ruling.

In summary, the jurisdiction over Alexandria waterfront lands as between Virginia courts on the one hand and District of Columbia courts on the other hand is once again in doubt. The aid of this Court is required to eliminate this confusion which will directly affect not only this litigation but also numerous present and future cases arising in Alexandria, Virginia.

SUMMARY OF POSITION

First, Virginia Land Owners contend that the District Court of D.C. has no res within its boundaries over which it may exercise judicial powers and therefore, the court lacks *in rem* jurisdiction.

Second, the 1912 Act does not confer subject matter jurisdiction on the District Court for the District of Columbia when the subject matter involves lands located solely within Virginia as the 1912 statute pertains to property located east of the January 24, 1791 high water mark of the Potomac River *and* within the District of Columbia as of 1912.

Third, in addition to the difficulties involved in determining the District Court's jurisdiction, all courts have been

reluctant, because of the basic principles of comity and rational judicial administration, to litigate issues relating to land situated outside their territorial boundaries.

Fourth, the Court of Appeals' decision imposes upon the District of Columbia District Court matters of purely local concern to Virginia citizens requiring that Court, in the words of the District Judge, to:

> become involved in a myriad of ancillary claims and cross-claims concerning conveyances, taxes, insurance, leaseholds, rents, etc., all involving Virginia laws, customs and practices, and Virginia citizens. (386 F.Supp. 1287, 1292, Exhibit F attached).

Finally, the Court of Appeals erred in its determination that Virginia Courts, both State and Federal, wholly lack civil jurisdiction over any and all matters related to these lands which comprise the entire Alexandria waterfront and which are located exclusively within Virginia's sovereign boundaries.

ARGUMENT

I.

THE DISTRICT OF COLUMBIA COURT DOES NOT HAVE IN REM JURISDICTION OVER PROPERTY LOCATED IN ALEXANDRIA, VIRGINIA

A. The United States District Court for the Eastern District of Virginia clearly has jurisdiction as to all lands at issue.

The United States does not and could not validly claim that any part of the land involved in this appeal lies in the District of Columbia.

Sec. 102 of the 1945 Boundary Act, 59 Stat. 552 declared that the land west of the pierhead line (which includes the

property in question) was "henceforth within the territorial boundaries, jurisdiction and sovereignty of the State of Virginia . . .".

Thus, property involved is entirely extra-territorial to the District of Columbia.

If the land is in the Commonwealth of Virginia, does the United States District Court for the Eastern District of Virginia have *in rem* jurisdiction?

Sec. 202 of the 1945 Act (Exhibit E attached) amends and re-enacts Sec. 111 of the Judicial Code (28 U.S.C. 127) which specifies what geographical area is embraced within the Eastern District of Virginia. The purpose of this amendment and re-enactment (in effect updating the effective date thereof) was to make absolutely certain that the Federal District Court for the Eastern District of Virginia had jurisdiction. In the legislative history of the 1945 Act this is set forth in explicit terms. House Report No. 595, 79th Cong. 1st Sess., page 2 (1945) states that:

> In order that there may be no question that the jurisdiction of *the Federal Courts of Virginia extends over this newly added territory*, the act of July 1, 1910, specifying the territories embraced in these counties, has been rewritten, so as to strike out the words "first day of July, 1910" and insert in lieu thereof "effective date of this Act" (Emphasis supplied).

This section of the Act of 1945 effectively amended and re-enacted that portion of 28 U.S.C. 127 dealing with the Eastern District of Virginia.

Contrary to the holding of the Court of Appeals therefore, the Eastern District of Virginia has jurisdiction *in rem* of all lands which are at issue in this proceeding, both those lands that may have been in the District of Columbia in 1912 and all lands either east or west of the indefinable

1791 line whether changes occurred after 1791 from accretion, erosion, reliction, permitted or proscribed fill, or any other cause which may have altered the 1791 high waterline.

B. The District Court for the District of Columbia, not having in rem jurisdiction across the Virginia state line, cannot enter an order vesting title. It is, therefore, under a functional disability to accomplish the purpose of this suit.

Although the issues in this case are extremely complex, the principal suit is basically one to quiet title to land within the territorial confines of the Commonwealth of Virginia. The District Court properly recognized the fundamental principle of law that a court does not have *in rem* jurisdiction over land situated outside the territorial boundary within which it sits. This principle was enunciated by the Supreme Court as early as 1810 in *Massie* v. *Watts*, 10 U.S. (6 Cranch) 148, 3 L. Ed. 181 (1810), in which Chief Justice Marshall held that title actions concerning questions of land patents are local actions which must be tried in a court of the state wherein such lands are situated.[3]

This principle was again enunciated in the landmark case of *Pennoyer* v. *Neff*, 95 U.S. 714, 24 L. Ed. 565 (1878), which states that a court has jurisdiction over land located only within the territorial boundaries of its jurisdiction. As to land within such territorial boundary, the court is empowered to decree even if, in so doing, legal rights of individuals not physically located within the court's territorial boundaries are affected.

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[3]If, however, the cause of action is based upon a contract, trust, or fraud, the cases may be tried wherever the defendants can be located, that is, wherever the court has proper in personam jurisdiction. There are no such allegations contained in the United States' complaint.

Since *Pennoyer* v. *Neff*, courts have consistently held that a proceeding *in rem* against specific property is local in character and must be brought where the property is situated. See also *Huntington* v. *Attrill*, 146 U.S. 657, 669, 36 L. Ed. 1123, 1128 (1892), wherein the Court stated:

> Proceedings in rem to determine the title to land *must* necessarily be brought in the State within whose borders the land is situated, and whose courts and officers alone can put the party in possession. (Emphasis supplied).

The same principle is stated in *United States* v. *11 Cases, More or Less, Ido-Pheno-Chon*, 94 F. Supp. 925, 926 (D. Ore. 1950):

> The District Courts of the United States were not created as units of one vast continental judicial system. Each has been organized by special statute as a court of the judicial system of the state in which it exercises power. A District Court is a separate entity. No District Court has jurisdiction crossing a state boundary.

It has been specifically applied to the District of Columbia in *Toneo Shirakura* v. *Royall*, 89 F. Supp. 713, 715 (D.C. D.C. 1949) which held that:

> The territorial boundaries of the District of Columbia are the terminals of the jurisdiction of this court and the judges sitting therein.

In the District of Columbia, the clearest enunciation of the principle that courts do not have *in rem* jurisdiction over extraterritorial property is found in *Columbia National Sand Dredging Company* v. *Morton*, 28 App. D.C. 288, 7 LRA NS 114 (1906). In *Columbia* the Supreme Court of

the District of Columbia (now the United States District Court) had *in personam* jurisdiction over the defendants (a Virginia Corporation maintaining an office in the District of Columbia as well as an individual resident of the District) who allegedly were removing sand and gravel from plaintiff's property *which was located in Maryland.*

At the request of the plaintiff, the D. C. District Court issued an injunction against the defendants enjoining them from removing sand and gravel from plaintiff's property. The United States Circuit Court of Appeals, in *reversing* the D. C. District Court, held that there was a lack of subject matter jurisdiction.

It should also be noted that the holding in *Columbia* is a universally accepted judicial principle and has been reasserted in the courts of the District of Columbia.[4] This Court in *Ellenwood* v. *Marietta Chair Co.*, 158 U.S. 105, 107, 39 L. Ed. 913, 914 (1895) stated:

> [A]n action for trespass upon land, like an action to recover the title or the possession of the land itself, is a local action, and can only be brought within the state in which the land lies.

The District of Columbia court has no res within its boundaries over which it can assert *in rem* jurisdiction consistent with the principles previously discussed. Prior to the enactment of the 1945 statute, it was uncertain whether the res was situated within the District of Columbia. Upon

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[4]*Buckley* v. *Delaware Louisiana Fur Trapping Co.*, 2 F. 2d 180 (E.D. La. 1924); 42 ALR 196; 1 *Moore's Federal Practice* ¶ 0.142 [2.-1]; *Stone* v. *United States*, 167 U.S. 178, 42 L.Ed. 127 (1897); *Curles* v. *Curles*, 136 F. Supp. 916 (D.C. D.C. 1955) *aff'd.* 241 F. 2d 448 (D.C. Cir. 1957); Pomeroy's, *Equity Jurisprudence*, §§ 298, 1318 (5th ed. 1941); T. Brown, *Commentaries on the Jurisdiction of Courts* (2nd ed. 1901).

enactment of the 1945 statute, however, waterfront property in Alexandria clearly lay outside the District of Columbia.

C. Problems As To Remedy

Were the District of Columbia District Court to enter an order vesting title in the United States, as the District of Columbia Circuit Court of Appeals held in *Columbia National Sand Dredging Company, supra*, such order pertaining to Virginia land "would be utterly ineffective as to the subject matter of the controversy."

If the government, furthermore, would seek to argue that those of the thirty defendants that have been properly served with process and are thus subject to the in personam order of the District of Columbia District Court can be forced by in personam decree to deed back to the U. S. lands allegedly wrongly held by them (the power to do which is denied by the authorities above cited), then there still is no answer as to the remaining defendants who are beyond the service of process of the District of Columbia Court save for an in rem action. As to these latter defendants no relief can be obtained for the District of Columbia Court has no power through its commissioners, magistrates and marshals to vest title in the United States because these lands lie in the State of Virginia.

An order by the District of Columbia Court vesting title back to the United States could not be carried out in Virginia by the officers of that Court. Nor could such a vesting order be entitled to full faith and credit in the Courts sitting in the Commonwealth of Virginia including the United States District Court for the Eastern District of Virginia. *Fall* v. *Eastin*, 215 U.S. 1, 30 S. Ct. 3, 54 L. Ed. 65 (1909); *Walsh on Equity*, Sec. 17, pp. 69-70 (1930).

An administrative nightmare, furthermore, could follow as a result of the retention of the case by the D. C. District Court in that the order from that Court, having no extra-territorial force, would not effect the necessary changes in the land records of Virginia upon which our system of real property ownership and title is based.

The problem of remedy is also pointed out in *Huntington* v. *Attrill, supra*, where the Supreme Court notes that proceedings in rem to determine title to property *must* be brought in the state where the land lies since only the courts and officers of such state have the power to put the party in possession.

Furthermore, consideration in the District of Columbia of this case would, as recognized by Judge Corcoran, involve the District of Columbia District Court

> in a myriad of ancillary claims and cross-claims concerning conveyances, taxes, insurance, leaseholds, rents, etc., all involving Virginia laws, customs and practices, and Virginia citizens. To date, in the course of this litigation the Court on two separate occasions has been asked to concern itself in two landlord-tenant disputes between co-defendants. Further, one defendant has moved for leave to file a third-party complaint which raises a separate and discrete question of the possible liability of those conveying the lands in controversy to the current record holders or interest holders. It is difficult to conceive that Congress intended that a Federal Court in the District of Columbia would decide these essentially local disputes. (386 F. Supp. 1287, 1292, Exhibit F attached).

As the property in question lies entirely within the State of Virginia, the Court of Appeals should be reversed in its decision that Virginia Courts, State or Federal, lack *in rem* jurisdiction to try title to these lands and that the requisite

jurisdiction lies exclusively in the federal courts of the District of Columbia.

II.

WITH RESPECT TO THE LAND IN QUESTION, THE ACTS OF 1912 AND 1945 DO NOT CONFER JURISDICTION ON THE DISTRICT OF COLUMBIA COURT.

As discussed in the previous section, long-standing legal principles require quiet title suits to be brought in the state within whose boundaries the property in question lies. The Acts of 1912 and 1945 are consistent with these principles in that they do not confer jurisdiction on the District of Columbia Court to hear quiet title actions involving land located entirely within Virginia.

The District Court correctly held that these statutes were intended to limit its jurisdiction to the District of Columbia. It would be an unreasonable and illogical interpretation of these Acts to deprive Virginia Federal Courts of jurisdiction over Virginia lands. The trial court correctly concluded that the contrary interpretation "would represent a drastic departure from that fundamental principle of law that a court has *in rem* jurisdiction only over lands located within its territorial boundaries." (386 F. Supp. 1287, 1292, Exhibit F attached).

The Act of April 27, 1912, 37 Stat. 93, sections 1 and 2 states, in part, as follows:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judg-

> ment it is deemed proper, a suit or suits in the Supreme Court of the District of Columbia against all persons and corporations, or others, who may have, or pretend to have, any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the *land or water in the District of Columbia* in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adjacent thereto, including made lands, flats and marsh lands.
>
> Sec. 2. That the suit or suits mentioned in the preceding section shall be in the nature of a bill in equity, and there shall be made parties defendant thereto all persons and corporations, or others, known to set up or assert any claim or right to or in the land or water in said preceding section mentioned, and against all other persons and corporations, or others, who may claim to have any such right, title, or interest.*** (Emphasis supplied).

The Act of 1912 established a judicial framework for resolution of disputes between private landowners and the United States over ownership of certain lands. As the District Court correctly ruled this statute concerned "land situated in the District of Columbia—and only in the District of Columbia". (386 F. Supp. 1287, 1291, Exhibit F attached).[7]

At the time the 1912 statute was enacted, there was no

[7] It is interesting that before the District Court the United States agreed that the 1912 Act was indeed limited to land only within the District of Columbia but the government argued that the District of Columbia Court's jurisdiction was extended by the 1945 Act to the lands in question. Before the Court of Appeals, however, the government argued that the 1912 Act conferred jurisdiction over these lands unless otherwise divested by the 1945 Act.

clear-cut boundary between the District of Columbia and Virginia. It was not until 1945 that Congress resolved the uncertainty surrounding the disputed boundary line between the District of Columbia and Virginia through enactment of the 1945 Act. Section 101 of that Act established the boundary line between the District of Columbia and Virginia which in Alexandria generally followed the pierhead line as then established.

Section 102 of the 1945 Act declared that the land west of the pierhead line (which includes the property in question) was "henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: Provided, however, that concurrent jurisdiction over the said area is hereby reserved to the United States." Thus this section does not designate the District of Columbia or courts therein as the forum for quiet title actions with respect to Alexandria waterfront property.

Counsel and the Court are faced with the meaning and interpretation of § 103 of the Act of 1945. That section states in pertinent part:

> Sec. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791. . . .

The District Court found that by this language Congress excluded any possible interpretation that the 1945 Act deprived the District of Columbia District Court of the jurisdiction granted it by the 1912 Act to quiet title to land east of the 1791 high water mark *and* in the District of Columbia. Thus, the trial judge retained jurisdiction of that part of this action relating to land of six of the original defendants, because the government contends those lands are in the District of Columbia.

This interpretation, furthermore, is consistent with the intent of Congress in the 1945 Act wherein it conferred, in explicit terms, jurisdiction over land in Virginia to the federal courts of the Eastern District of Virginia. See argument as to the effect of §§ 102 and 202 of the 1945 Act, I A, *supra.*

The Court of Appeals' decision holds that the District of Columbia Court was granted subject matter jurisdiction over land lying outside its territory, and that this grant deprived the Virginia Courts, both State and Federal, of jurisdiction to hear such *in rem actions.* If this were the proper meaning of the 1945 Act or were the intention of the framers of that Act i.e., to negate the *in rem* jurisdiction of Virginia Federal and State courts over Virginia land, such a drastic change of long recognized principles would have been made explicit. Furthermore, if this were what Congress intended, it surely would have explicitly granted to the District of Columbia Court some way of reflecting its determinations in the Virginia land records and otherwise enforcing its decrees extraterritorially and would *not* have unqualifiedly extended the jurisdiction of the United States District Court for the Eastern District of Virginia to the land in question.

III.

PLACING THIS DISPUTE IN ITS HISTORICAL PERSPECTIVE SHOWS THAT THE GOVERNMENT'S INTERPRETATION OF THE 1912 AND 1945 ACTS IS CONTRARY TO LONG-STANDING PRINCIPLES OF BOUNDARY LAW.

As indicated in the statement of the case, Virginia ceded land to the federal government to form the District of Columbia. Maryland also ceded land to the United States which cession was accepted by Congress in 1790 (1 Stat. 130) and was ratified by Maryland in 1791 (2 Kilty, Laws of Maryland, Ch. 45).

From 1791 until 1846, a portion of the city of Alexandria, including its waterfront, was part of the District of Columbia. In 1846, Alexandria County of the District of Columbia was retroceded to the State of Virginia.

In adopting the federal government's position, the Court of Appeals held that, since this retrocession included only lands which Virginia had ceded, the boundary between the District of Columbia and the Commonwealth of Virginia became the high water mark on the Virginia side of the Potomac River as of January 24, 1791. No one, including the United States, knows the whereabouts of the high water mark of the Potomac River as it existed in 1791.[6] As the Court of Appeals, however, correctly pointed out

> In view of the District Court's and [petitioners'] heavy reliance on the fact that section 1 of the 1912 Act only directs the Attorney General to bring suits in the United States District Court for the District of Columbia against entities who may have an interest adverse

[6]The government when before the District Court admitted in oral argument that it could not locate the 1791 high waterline.

> to the United States' interest in lands "in the District of Columbia" the pivotal question becomes: What lands (fast or submerged) were "in the District of Columbia" *in 1912 when Congress used this language?* (emphasis in the original, page 9 of Exhibit F).

The Court of Appeals then recognized that the now indefinable 1791 boundary line, according to indisputable legal principles, is *not* static but is ever shifting as it depends upon the natural movement of the Potomac River through the processes of accretion and erosion.

This point was illustrated in *Smoot Co.* v. *Washington Airport*, 283 U.S. 348 (1931) in which the Supreme Court of the United States held that the District of Columbia/Virginia boundary line as of 1931 was the "usual high-water mark" of the Potomac River and the Court cited its prior decision of *Oklahoma* v. *Texas,* 260 U.S. 606, 67 L. Ed. 428 (1923) in support of this proposition.

In *Oklahoma* v. *Texas, supra,* referred to in the *Washington Airport* case, the Supreme Court of the United States concluded:

> The boundary as it was in 1821, when the treaty became effective [between the territory of the United States and the Spanish possessions—later to belong to Oklahoma and Texas], is the boundary of today, subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes. Of those doctrines this court recently said:
>
> > "It is settled beyond the possibility of dispute that where running streams are the boundaries between states, the same rule applies as between private proprietors; namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion,

> the boundary follows the varying course of the stream . . . ." 260 U.S. at 636.

In the District of Columbia-Virginia Boundary Hearings, H. Rep. 9670, 74th Cong., 2d Sess. (1936), the United States took a different position from that it presently assumes when its counsel stated at page 40 of the report:

> Mr. Glassie. The line of 1791 is modified in two ways: First, by the *action of nature in making new land*, little by little, indistinguishably against the Virginia shore so that the boundary line and the private line of ownership would move with that natural shift. That is correct.
>
> The other is that where there has been *artificial land made by man, but made so long ago and acquiesced in by the sovereign of the opposite shore for so great a length of time that he has closed his mouth, then, by the doctrine of interstate or international prescription, the boundary would change with that.* (Emphasis supplied).

Consequently, the boundary line between the District of Columbia and Virginia and property ownership have never been categorically limited to the original 1791 high water mark of the Potomac River, as the United States has suggested to the lower courts. Prior to the passage of the 1945 Boundary Act, the Virginia/District of Columbia boundary line, when dependent upon the course of the Potomac River, was constantly changing as the result of accretion and erosion from 1791 until 1945 or a period of over 150 years!

While the government's position presupposes that the land in controversy and owned by the petitioners is riverward of the Alexandria, Virginia 1791 shoreline, there is no proof of this assertion. And as the Supreme Court of the

United States pointed out in *Oklahoma* v. *Texas, supra,* should any party seek to assert that the then existing high water mark is not the true boundary, the burden is upon such party to prove the material change in the boundary from that presently existing.

The Court of Appeals attempts, however, to clarify the jurisdiction of the District of Columbia District Court as it relates to an ever changing boundary line prior to 1945 and in so doing sweeps aside this Court's holding in *Oklahoma* v. *Texas, supra.* The Court of Appeals stated on page 11 of its slip opinion (Exhibit A attached):

> The exact location of the 1791 high water line is, essentially irrelevant *in a jurisdictional* sense, since Congress directed that these issues be determined in the United States District Court for the District of Columbia. *In other words, at least insofar as jurisdiction is concerned, Congress saw fit in the Acts of 1912 and 1945 to overrule legislatively the common law doctrines of accretion and erosion.* (Emphasis supplied).

The conclusion reached by the Court of Appeals, therefore, characterizes as mere surplusage the limiting language in the 1912 Act ("in the District of Columbia"). While the Court of Appeals indicates that the limiting language is only surplusage insofar as "jurisdiction is concerned" it must be recognized that the limiting language in the Act of 1912 pertains to nothing else but jurisdiction.

The correct conclusion to be drawn is that the 1912 Act limited the jurisdiction of the District of Columbia District Court to lands "in the District of Columbia" as of 1912. At present the land in question is admittedly in Virginia and prior to 1945 there is no consensus or proof as to which, if any, of these lands were in the District of Columbia. With this significant cloud upon the extent of jurisdiction of the

District of Columbia District Court it is time to review briefly the jurisdiction of the Virginia courts, both State and Federal, over lands comprising the Alexandria, Virginia waterfront.

IV.

THE COURT OF APPEALS ERRED IN ITS DETERMINATION THAT VIRGINIA COURTS, BOTH STATE AND FEDERAL, WHOLLY LACK CIVIL JURISDICTION OVER ANY AND ALL MATTERS RELATED TO THESE LANDS WHICH COMPRISE THE ENTIRE ALEXANDRIA WATERFRONT AND WHICH ARE LOCATED EXCLUSIVELY WITHIN VIRGINIA'S SOVEREIGN BOUNDARIES.

As discussed earlier, *in rem* jurisdiction clearly rests with the courts in which the property is situated. Under these settled principles Virginia courts have jurisdiction to hear all matters in any way related to the land in issue. The Court of Appeals has held that by virtue of the 1912 and 1945 Acts the District of Columbia District Court has *exclusive* civil jurisdiction over these lands. These Acts, however, contain no language limiting the jurisdiction of Virginia courts and clearly indicate Virginia lands are to be under the jurisdiction of Virginia Federal and State courts.

For instance, § 202 of the 1945 Act re-enacted section 111 of the Judicial Code so that, in the words of the legislative history of the 1945 Act, "there may be no question that the jurisdiction of the Federal Courts of Virginia extends over this newly added territory." The Court of Appeals, however, construed this language to be limited to police and criminal jurisdiction even though no such limitation is expressed.

In addition, section 102 of the 1945 Act declared that

the land west of the pierhead line (which includes the property in question) was "henceforth within the territorial boundaries, jurisdiction and sovereignty of the State of Virginia: Provided, however, that *concurrent jurisdiction* over the said area is hereby reserved to the United States."

What reasonable interpretation is there to the language of § 202 explicitly granting jurisdiction over these lands to the Federal Courts of Virginia and to that of § 102 reserving concurrent jurisdiction over the same area to the United States? Notice that the concurrent jurisdiction is not reserved to the Courts of the United States in the District of Columbia. The concurrent jurisdiction is reserved to the sovereign. Concurrent with whom? Obviously with Virginia. What jurisdiction does the United States retain? It has maritime, naval, coast guard, EPA and other jurisdictions. It owns the land which is both under water and west of the boundary line. Its police can effect arrests upon navigable waters. Its courts, including the United States District Court for the Eastern District of Virginia, have jurisdiction by the 1945 Act. Such jurisdiction of the Federal Courts in Virginia embrace, therefore, all civil and criminal cases. These interpretations allow both the 1912 and 1945 Acts (with all their sections) to be read with meaning accorded to both (and all).

There being absent a clear exclusion or any exclusion at all of jurisdiction from the Virginia courts, the Court of Appeals erred in its determination that Virginia courts wholly lack civil jurisdiction over matters related to the lands in question.

CONCLUSION

This suit is basically one to quiet title to land within the territorial confines of the Commonwealth of Virginia. Par-

ticularly since a decision in this case will undoubtedly affect the Commonwealth of Virginia, the City of Alexandria and some thirty-five (35) Virginia defendants, the proper place to litigate this issue is in the Federal courts of Virginia.

The overriding fact in this case is that the Virginia Federal courts clearly have *in rem* jurisdiction over these lands while the jurisdiction of the District of Columbia Court is limited to its own territorial boundaries. This is the most rational and workable interpretation that can be placed on the 1912 and 1945 Acts and accords with the applicable law as herein discussed.

Finally, the decision of the Court of Appeals that Virginia Courts totally lack civil jurisdiction over the Alexandria waterfront is unwarranted by any reading of the 1912 or 1945 Acts or the cases cited herein.

Accordingly, certiorari should issue and the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

ROBINSON TERMINAL WAREHOUSE CORPORATION

A. C. EPPS
CHARLES F. MIDKIFF
CHRISTIAN, BARTON, EPPS, BRENT & CHAPPELL
1200 Mutual Building
Richmond, Virginia 23219
Of Counsel to Robinson Terminal Warehouse Corporation

MILTON QUINT
ROBERT F. CONDON
MICHAEL E. KRIS
DANZANSKY, DICKEY, TYDINGS,
QUINT & GORDON
Suite 1010, Bender Building
1120 Connecticut Avenue, N.W.
Washington, D. C. 20036
Of Counsel to Robinson Terminal
Warehouse Corporation

COMMONWEALTH OF VIRGINIA

JOHN HARDIN YOUNG
Assistant Attorney General of
Virginia
1101 East Broad Street
Richmond, Virginia 23219
Of Counsel

VIRGINIA ELECTRIC AND POWER
COMPANY,
ROBINSON REALTY CORPORATION,
SAND AND GRAVEL PROPERTIES, INC.

JOHN S. STUMP
BOOTHE, PRICHARD & DUDLEY
711 Princess Street, P. O. Box 1101
Alexandria, Virginia 22313
Of Counsel to Virginia Electric
and Power Company, Robinson
Realty Corporation, Sand and
Gravel Properties, Inc.

JOHN J. ADAMS
HUNTON & WILLIAMS
1730 Pennsylvania Avenue, N.W.
Washington, D. C. 20006
Of Counsel to Robinson Realty
Corporation and Virginia
Electric and Power Company

CITY OF ALEXANDRIA

CYRIL D. CALLEY
320 King Street
Alexandria, Virginia 22314
Of Counsel to City of Alexandria

OLD DOMINION BOAT CLUB

ALBERT E. BRAULT
BRAULT, GRAHAM, SCOTT & BRAULT
1314 19th Street, N.W.
Washington, D. C. 20036
Of Counsel to Old Dominion Boat
Club

RUSSELL S. AND FLAVIENNE G.
CRENSHAW

YVONNE F. WEIGHT
411 N. Washington Street
Alexandria, Virginia 22314
Of Counsel to Russell S. and
Flavienne G. Crenshaw

NORTON AND COMPANY

W. CURTIS SEWELL
607 Prince Street
Alexandria, Virginia 22313
Of Counsel to Norton and Company

PLATO CACHERIS
1700 New York Avenue
Washington, D. C. 20006
Of Counsel to Norton and Company

POTOMAC ARMS CORPORATION AND
JOHN C. RICHARDS

ROBERT L. MURPHY
307 North Washington Street
Alexandria, Virginia 22314
Of Counsel to Potomac Arms
Corporation and John C.
Richards

WILLIAM E. O'NEILL, JR.
1120 Connecticut Avenue, N.W.
Washington, D. C. 20006
Of Counsel to Potomac Arms
Corporation and John C.
Richards

THE TEXAS COMPANY

JO V. MORGAN, JR.
WHITEFORD, HART, CARMODY & WILSON
815 15th Street, N.W.
Washington, D. C. 20005
Of Counsel to The Texas Company

THOMAS H. ANDREWS, INC.

B. G. STEPHENSON
2001 Jefferson Davis Highway
Suite 603
Arlington, Virginia 22202
Of Counsel to Thomas H. Andrews, Inc.

LEONARD C. GREENEBAUM
1620 I Street, N.W.
Washington, D. C. 20006
Of Counsel to Thomas H. Andrews, Inc.

CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 1976, I mailed, postage prepaid, three true copies of the foregoing Petition for Writ of Certiorari to Wallace H. Johnson, Esquire, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Jacques B. Gelin, Esquire, David W. Miller, Esquire, and Lawrence E. Shearer, Esquire, Attorneys, Department of Justice, Washington, D. C. 20530; William L. Hansbarger, Esquire, 10523 Main Street, Fairfax, Virginia 22030; Bernard M. Fagelson, Esquire, 124-126 South Royal Street, P. O. Box 297, Alexandria, Virginia 22314; William J. Fitzgerald, Esquire, 421 Shoreham Building, N.W., Washington, D. C. 20005; Kurt Berlin, Esquire, 320 Southern Building, Washington, D. C. 20005; Herbert S. Billowitz, Esquire, 124 Royal Street, Alexandria, Virginia 22314; MCE Corporation, c/o Samuel Ellsworth, 117 Saint Asaph Street, Alexandria, Virginia 22314; Beverly D. Turner, 2713 King Street, Alexandria, Virginia 22302; Leroy S. Bendheim, Esquire, Bendheim, Ratner & Milligan, 718 Jefferson Street, Alexandria, Virginia 22314; Max Ratner, Esquire, Bendheim, Ratner & Milligan, 718 Jefferson Street, Alexandria, Virginia 22314; Donald C. Wells, Esquire, 123 South Royal Street, Alexandria, Virginia 22314; Chester G. Pierce, Esquire, 2012 Glen Drive, Alexandria, Virginia 22307; Alexandria Service, Inc., 226 Strand Street, Alexandria, Virginia 22314; and Robert E. Nagle, Esquire, Lichtman, Abeles, Anker & Nagle, P.C., 1730 M Street, N.W., Washington, D. C. 20036.

A. C. Epps

EXHIBITS

A July 6, 1976 Opinion of Circuit Court of Appeals for the District of Columbia

B Act of July 16, 1790, 1 Stat. 130

C An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35 (1846)

D Act of April 27, 1912, 37 Stat. 93

E Act of October 31, 1945, 59 Stat. 552

F Opinion of the District Court dated December 9, 1974, 386 F. Supp. 1287 (D.C.D.C. 1974) and Implementing Order dated January 29, 1975.

Exhibit A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1440

UNITED STATES OF AMERICA

v.

HERBERT BRYANT INCORPORATED, ET AL.

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action 2211-73)

Argued 8 April 1976

Decided 6 July 1976

Kathryn A. Oberly, Attorney, Department of Justice, for appellant. *Wallace H. Johnson*, Assistant Attorney General at the time the brief was filed, *David W. Miller*, *Jacques B. Gelin* and *Lawrence E. Shearer*, Attorneys, Department of Justice, were on the brief for appellant.

Agustus C. Epps, with whom *Charles F. Midkiff*, *Robert F. Condon* and *Michael E. Kris*, were on the brief for appellee, Robinson Terminal Warehouse Corporation, argued for all appellees.

Cyril D. Calley, was on the brief for appellee City of Alexandria. *J. Howard Middleton, Jr.*, entered an appearance for appellee City of Alexandria.

Albert E. Brault was on the brief for appellee, Old Dominion Boat Club.

William E. O'Neill, Jr., was on the brief for appellees, Potomac Arms Corporation and *John C. Richards*.

W. Curtis Sewell was on the brief for appellees, Crenshaw and Norton and Company, Inc.

Jo V. Morgan, Jr., was on the brief for appellee, The Texas Company.

John J. Adams, was on the brief for appellees, Robinson Realty Corporation and Virginia Electric and Power Company.

Leonard G. Greenebaum, was on the brief for appellee, Thomas H. Andrews, Inc.

Plato Cacheris, was on the brief for appellee Norton and Company.

Robert E. Nagle, entered an appearance for appellee Old Town Yacht Basin, Inc.

George H. Clark, entered an appearance for appellee, Slater's Lane, Inc.

John J. Adams, entered an appearance for appellees Sand & Gravel Properties, Inc., and Southern Railway Company.

Mark Foster, entered an appearance for appellees Crenshaw.

Before: McGOWAN, ROBINSON and WILKEY, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* WILKEY.

WILKEY, *Circuit Judge*: This is an appeal by the United States from a memorandum and order[1] of the United States District Court for the District of Columbia (Corcoran, J.) dismissing as to thirty of thirty-six named defendants the Government's action to quiet title to certain lands along the Alexandria, Virginia, waterfront.[2] The lands involved are submerged and artificially created fast lands which have been added to the Alexandria waterfront since 24 January 1791, the date the State of Maryland ceded to the United States the land now comprising the District of Columbia. The United States' action was brought pursuant to section 1 of the Act of 27 April 1912, ch. 96, 37 Stat. 93 (hereinafter the 1912 Act), as affirmed by section 103 of the Act of 31 October 1945, ch. 443, 59 Stat. 552 (hereinafter the 1945 Act).

Appellees, record owners or interest holders of Alexandria waterfront property, challenged the jurisdiction of the United States Disrtict Court for the District of Columbia to entertain an action to quiet title to real property located on the Virginia side of the pierhead line between the interception of the pierhead line and Second Street, Alexandria, and the interception of the pierhead line and the southeastern Maryland-District of

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[1] *United States v. Bryant*, 386 F. Supp. 1287 (D.D.C. 1974).

[2] "[A]ll fast and submerged lands in Virginia or the District of Columbia bounded on the south by the north line of the United States Navy pier, as such line extends shoreward, such line being 176 feet 7 inches south of the south line of Gibbon Street and on the north by the south property line of parklands of the United States, such line being approximately 500 feet north of and parallel to the street known as Slater's Lane, and as said boundaries would extend into the River, and on the west by the January 24, 1791, high water mark of the Potomac River, as such lands extend into the River. . . ." Complaint of the United States, J.A. at 28-29. Hereinafter we will refer to this area as "the Alexandria waterfront."

Columbia boundary line. Appellees asserted that sections 101 and 102 of the 1945 Act [3] settled the longstanding boundary dispute between the Commonwealth of Virginia and the District of Columbia by establishing a new boundary at the pierhead line, and that any action to quiet title to real property on the Virginia side of this new boundary must be brought in the United States District Court for the Eastern District of Virginia.

Although the United States opposed appellees' motions to dismiss on the ground that section 103 of the 1945 Act expressly preserved the District Court's jurisdiction to adjudicate actions brought by the United States to quiet title to lands along the Alexandria waterfront, the District Court concluded that as to thirty of the named defendants it was without jurisdiction and on 29 January 1975 dismissed the Government's action against those defendants.[4] We agree with the position of the

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[3] Quoted *infra* at 14-15 & 15 n.25, respectively.

[4] In its memorandum opinion of 9 December 1974 the District Court explained its disagreement with the Government's position as follows:

> It is the Government's position that § 103 of the 1945 Act explicitly reserves exclusive jurisdiction in this Court over the disputed lands notwithstanding that they lie within the territorial limits of Virginia because formerly the "very lands here in controversy were within the territorial limits of this Court for quiet title actions brought by the United States," by virtue of the 1912 Act and pertinent decisions of the Supreme Court. The defendants, on the other hand, contend that the 1945 Act does no more than preserve this Court's jurisdiction over lands described in the Act of 1912, *i.e.*, land in the District of Columbia. They bolster this assertion by noting that Section 202 of the 1945 Act extends the jurisdiction of the District Court for the Eastern District of Virginia over the area within which the disputed lands lie, and that it would be unreasonable to deprive that Court of jurisdiction over such lands.
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> [Continued]

United States, and therefore reverse the decision of the District Court.

I. Historical and Statutory Background

This dispute, both in its present jurisdictional posture and in its substantive aspects relating to title, arises out of a one-hundred-and-thirty-year-old boundary dispute between the Commonwealth of Virginia and the District of Columbia. The dispute began in 1846 when Congress retroceded to Virginia the land it had ceded to the United States for the creation of a federal city.[5]

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[4] [Continued]

> The Court's view of § 103 is that it is a legislative reaffirmation of the 1912 Act, that the term "said Act" clearly refers to the 1912 Act, and that the "lands" referred to in § 103 are those lands "in the District of Columbia" as specified by the 1912 Act. This conclusion is consistent with the terms of § 202, which amended the then-Judicial Code so as to embrace within the boundaries of the District Court for the Eastern District of Virginia the land ceded to Virginia by §§ 101 and 102 of the 1945 Act.

386 F. Supp. at 1291-92 (footnote omitted). Accordingly, the District Court dismissed those defendants claiming ownership or an interest in land on the Virginia side of the pierhead line running between Gibbon Street on the south and Second Street on the north. Based on a dispute as to whether certain parcels of land between Third Street and Slater's Lane are in Virginia or the District of Columbia, the District Court retained jurisdiction over six defendants. The court's order, entered 29 January 1975, included a certification pursuant to Fed. R. Civ. P. 54(b) so as to permit immediate appellate review.

The reasons we reach a different conclusion from that of the District Court are found in sections II and III of this opinion *infra*.

[5] The pertinent provisions of "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State [*sic*] of Virginia" provide as follows:

The United States takes the position, with which we agree, that, since this retrocession included only those lands which Virginia had originally ceded in 1791, the boundary in 1846 between the District of Columbia and Virginia became the high-water mark on the Virginia side of the Potomac River as of 24 January 1791. Any land, either submerged or fast, on the District of Columbia side of the 1791 high-water mark remained in the District of Columbia since it was part of the 24 January 1791 Maryland cession to the United States.

In order to clarify and protect federal interests along the Alexandria waterfront, Congress in 1912 enacted the following statute:

> . . . That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judgment it is deemed proper, a suit or suits in the Supreme Court of the District of Columbia [now the United States District Court for the District of Columbia] against all persons and corporations, or others, who may have, or pretend to have,

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia ceded to the United States by the State [*sic*] of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.

SEC. 2. *And be it further enacted*, That nothing herein contained shall be construed to vest in the State [*sic*] of Virginia any right of property . . . in the soil of the territory hereby receded, so as to affect the rights of individuals or corporations therein . . . .

Act of 9 July 1846, ch. 35, §§ 1 & 2, 9 Stat. 35.

> any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the land or water *in the District of Columbia* in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adjacent thereto, including made lands, flats, and marsh lands.[6]

However, no general action to adjudicate title to lands lying along the Alexandria waterfront was initiated until 21 December 1973 when the United States filed the suit now before this court.

Since 1912 the Alexandria waterfront has been extended (artificially and perhaps naturally) into the Potomac River at several places, and jurisdictional uncertainties increasingly have plagued law enforcement activities in the area. To alleviate this problem, Congress passed the 1945 Act to "establish a definite clear-cut boundary line, easy to recognize and convenient *for police and court jurisdiction. . . .*"[7] By ceding *concurrent ju-*

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[6] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93. Appellees and the District Court place a great deal of reliance on the five words "in the District of Columbia" italicized above. We explain why this reliance is misplaced *infra* at 8-16.

The District Court also suggests that "the [1912] Act was designed primarily to meet the problems of the Anacostia River reclamation . . .," *i.e.*, not to meet the problems of the Alexandria waterfront. 386 F. Supp. at 1290 (footnote omitted). While the Anacostia River reclamation project may well have been the motivating force behind the 1912 Act, the same House report cited as authority by the District Court states that "[t]he bill also provides for the settlement of any *future* questions along the river frontage of the District where the United States has a claim of rights." H.R. Doc. No. 513, 62d Cong., 2d Sess. 1 (1912) (emphasis added).

[7] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added).

risdiction to the Commonwealth of Virginia over all lands located between the pierhead line and the mean high-water mark of 1791, this statute established the pierhead line as the new jurisdictional boundary between Virginia and the District of Columbia, at least for *law enforcement (i.e., police and court) purposes.*

Section 103 of the 1945 Act, however, specifically preserved the exclusive jurisdiction of the United States District Court for the District of Columbia to determine the title to lands lying along the Alexandria waterfront:

> SEC. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; *or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912* (37 Stat. 93); *or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791 . . . .*[8]

II. JURISDICTION TO ADJUDICATE THE UNITED STATES' ACTION TO QUIET TITLE

The jurisdictional issue in this case turns entirely upon an interpretation of four interrelated statutory provisions: section 1 of the 1912 Act and sections 101, 102, and 103 of the 1945 Act.

In section 1 of the 1912 Act, Congress directed the Attorney General of the United States to institute suits

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[8] Act of 31 Oct. 1945, ch. 443, § 103, 59 Stat. 552 (set out as a note under D.C. CODE ANN. § 1-101 (1973)).

in the Supreme Court of the District of Columbia (the predecessor of the United States District Court for the District of Columbia) to establish and make clear the title of the United States to submerged and fast lands along the Potomac River within the boundaries of the District of Columbia *as it then existed.*[9] These four italicized words are critical to the outcome of this case. In view of the District Court's and appellees' heavy reliance on the fact that section 1 of the 1912 Act only directs the Attorney General to bring suits in the United States District Court for the District of Columbia against entities who may have an interest adverse to the United States' interest in lands "in the District of Columbia," [10] the pivotal question becomes: what lands (fast or submerged) were "in the District of Columbia" *in 1912 when Congress used this language?*

After the 1931 Supreme Court decision in *Smoot Sand & Gravel Corp. v. Washington Airport, Inc.*,[11] it is in-

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[9] Section 1 is quoted, in relevant part, *supra* at 6-7. Additionally, we note that section 4 of the 1912 Act provides as follows:

> SEC. 4. That if on the final hearing of said cause the said Supreme Court of the District of Columbia [*i.e.*, the United States District Court for the District of Columbia] shall be of opinion that there exists any right, title, or interest in the land or water in this Act mentioned in any person, or corporation, or others, adverse to the complete and paramount right of the United States, the said court shall forthwith and in a summary way proceed to ascertain the value of any such right, title, interest, or claim, exclusive of the value of any improvement to the property covered by such right, title, or interest made by or under the authority of the United States, and report thereof shall be made to the Congress.

Act of 27 April 1912, ch. 96, § 4, 37 Stat. 93.

[10] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93. *See* note 4 *supra.*

[11] 283 U.S. 348 (1931).

disputable that *in 1912* the jurisdictional boundary (for all purposes) between Virginia and the District of Columbia was the high-water mark of the Potomac River on the Virginia side as of 24 January 1791, *not* the pierhead line later established *in 1945* for law enforcement and perhaps other purposes. In *Smoot*, speaking through Justice Holmes, the Court explained:

> The Circuit Court of Appeals states that the sole question presented is whether the boundary line between Virginia and the District of Columbia is at high or at low water mark on the Virginia side of the Potomac, and that is the only question argued here. In view of the previous decisions and intimations of this Court it does not need extended discussion now.
>
> It must be assumed, notwithstanding some suggestion of ancient controversies, that the title of Maryland was that conveyed to Lord Baltimore by the charter of Charles I. and ran to and along the farther bank of the Potomac River. *Marine Railway & Coal Co.* v. *United States*, 257 U.S. 47, 63. This means that the boundary was the usual high water mark, *Oklahoma* v. *Texas*, 260 U.S. 606, 626, *et seq.*; so that the only question is whether anything has happened since to change the original line.[12]

Appellees attempt to discredit the authority of *Smoot* on three grounds. First, they complain that "[n]o one, including the United States, knows the whereabouts of the high water mark of the Potomac River as it existed in 1791." Second, they assert that the Government wants the boundary line between the District of Columbia and Virginia "categorically limited . . . to the original 1791 high water mark . . ." notwithstanding the *Smoot* Court's reference to *Oklahoma v. Texas* where the Court had previously recognized the effect of such natural boundary-

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[12] *Id.* at 350.

changing forces as accretion and erosion. Third, appellees contend that the Government's (and this court's) reading of *Smoot* "is in direct conflict with section two of the Act of Retrocession" of 9 July 1846.[13]

As to appellees' first objection, we accept the Government's response that while it may not be able to locate indisputably the 1791 high-water mark at this time, it could "after discovery and adequate test or core drilling, establish which portions of the disputed area were artificially filled after 1791." [14] Thus, the fact that no one at this moment can precisely locate the 1791 line does not diminish—especially from a jurisdictional perspective—the importance of the *Smoot* Court's approval of that line, nor mean—from the standpoint of the merits—that the Government will not be able to prove title to any of the property at issue in this case.

As to appellees' second objection, we again agree with the Government's response: "The exact location of the 1791 high water line is, essentially irrelevant *in a jurisdictional sense*, since Congress directed that these issues be determined in the United States District Court for the District of Columbia." [15] In other words, at least *insofar as jurisdiction is concerned*, Congress saw fit in the Acts of 1912 and 1945 to overrule legislatively the common law doctrines of accretion and erosion.

So long as there is a genuine dispute over title (*i.e.*, a dispute over present title or the location of present-day boundaries) the District Court for the District of Columbia has, by virtue of the 1912 Act, exclusive subject matter jurisdiction over Government-initiated quiet title actions involving Alexandria waterfront property. Perhaps the District Court will decide that, through sections

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[13] Appellee's Brief at 23 & 25.

[14] Government Reply Brief at 2 n.2.

[15] *Id.* (emphasis added).

101 and 102 of the 1945 Act, Congress intended to relinquish *all* title claims (not just law enforcement jurisdiction) to the Alexandria waterfront property, but in section 103 decided, in case a dispute arose, to preserve in the District of Columbia federal courts the exclusive subject matter jurisdiction established by the 1912 Act.[16] Nevertheless, even this determination on the merits would *not* deprive the court of subject matter jurisdiction over this title dispute.

Finally, we do not understand how appellees find the Government's and this court's interpretation of *Smoot* to be "in direct conflict with section 2 of the Act of Retrocession . . ." of 9 July 1846.[17] In the first place, since this Act only retroceded lands on the Virginia side of the 1791 high-water line (the land Virginia originally ceded), it does not affect the Alexandria waterfront property now in dispute.[18] Moreover, section 2 talks only in terms of not vesting "*in the State of Virginia* any right

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[16] *But see* Act of 31 Oct. 1945, ch. 443, § 103 (first clause), 59 Stat. 552 *and* the legislative history quoted in the text at note 22 *infra*.

[17] Appellees' Brief at 23. Section 2 of this Act is quoted, in relevant part, at note 5 *supra*.

[18] Appellees in moving to dismiss for lack of jurisdiction and the District Court in granting appellees' motions as to thirty of the named defendants appear to have accepted the Government's assertion that "the land area giving rise to this action is located . . . riverward of the highwater mark of the Potomac River on the Virginia side as of January 24, 1791 . . . ." Government Brief at 12-13. In any event, if appellees do not agree with this assertion, on remand the District Court will have to decide this threshold jurisdictional issue, and appellees will have ample opportunity to make their position known. If, on remand, the District Court finds that the land here at issue is situated *on the Virginia side* of the 1791 high-water line, then, of course, the 1912 Act would *not* confer jurisdiction upon the court, and the case would have to be dismissed.

of property";[19] it does not speak to the rights (or lack thereof) of the United States.

Again borrowing the words of Justice Holmes, we conclude that ". . . the only question is whether anything has happened since [1912] to change the original [1791] line."[20] Appellees, with whom the District Court agreed, suggest that the 1945 Act somehow shrunk the 1912 quiet title jurisdiction of the District Court down to those lands which are *both* in the District of Columbia (according to the *new* boundary established by section 101 of the 1945 Act) *and* east of the 1791 high-water mark. Of course, *in 1912* these two requirements—being in the District of Columbia and being east of the 1791 high-water mark—were one and the same requirement; after 1945, however, the former no longer included all of the latter. We turn now to the relevant provisions of the 1945 Act.

The Act of 31 October 1945 was passed by Congress, at the urging of the Attorney General, for the express purpose of "establish[ing] a definite clear-cut boundary line, easy to recognize and convenient *for police and court jurisdiction*, between the District of Columbia and the Commonwealth of Virginia."[21] Both the Senate and the House reports on the 1945 Act explain,

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[19] Act of 9 July 1846, ch. 35, § 2, 9 Stat. 35 (emphasis added).

[20] *Smoot Sand & Gravel Corp. v. Washington Airport, Inc.*, 283 U.S. at 350.

[21] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added). The Attorney General informed Congress,

> [A]t present the enforcement of the criminal law is hampered, and at times even frustrated, by reason of the uncertainty as to what courts have jurisdiction over *criminal* offenses committed within the disputed area.

H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added).

> . . . The bill in no way affects property rights and claims as they now exist in this area. It establishes definitely the Federal courts in which all *criminal* offenses will be tried [*i.e.*, the District Court for the Eastern District of Virginia].[22]

Section 101 of the 1945 Act established the *new* boundary between the District of Columbia and Virginia for law enforcement (and perhaps other)[23] purposes as follows:

> Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States,

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[22] H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added). *Accord*, H.R. Doc. No. 513, 62d Cong., 2d Sess. 2 (1912) re the 1912 Act:

> The bill has no other effect than to provide a means to quiet title. . . . The matter of future disposition of the land is not affected and the question of the acquirement of private rights which may de [*sic*] determined to exist, as well as the disposition of the land confirmed in the United States, is left to the future action of the Congress.

[23] *But see* the language from both the House and the Senate reports on the 1945 Act quoted in the text accompanying note 22 *supra*.

> or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.[24]

Although section 102 of the Act cedes to Virginia sovereignty and *concurrent jurisdiction* with the United States over the area between the 1791 high-water mark and section 101's newly established pierhead line,[25] *section 103 expressly states that the Act is to have no effect on* (1) "any right, title, or interest of the United States" in these lands, (2) "the right of the United States to establish its title to any of [these] lands as provided by [the 1912 Act]," or (3) "the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act [the 1912 Act] below the mean high-water mark of January 24, 1791 . . . ." [26]

According to the Supreme Court's decision in *Smoot*, the "lands as described by said Act [the 1912 Act]" [27]

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[24] Act of 31 Oct. 1945, ch. 443, § 101, 59 Stat. 552.

[25] Section 102 provides:

> All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State [*sic*] of Virginia: *Provided, however*, That concurrent jurisdiction over the said area is hereby reserved to the United States.

Id. § 102.

[26] *Id.* § 103.

[27] *Id.*

and "in the District of Columbia" [28] before passage of the 1945 Act, were those lands along the Alexandria waterfront below the mean high-water mark of 24 January 1791. Clearly, the House and Senate saw it this way when they passed the 1945 Act. In their respective reports, both Houses of the Congress recognized,

> . . . The United States Supreme Court has set the boundary line between the District of Columbia and the Commonwealth of Virginia at the high-water mark of the Potomac on the Virginia shore as it existed when the District of Columbia was created in 1791. (*Washington Airport* v. *Smoot Sand and Gravel Corporation*, 283 U.S. 348, decided May 4, 1931.) [29]

III. Conclusion

The District Court's determination that it does not possess subject matter jurisdiction over this quiet title action flies directly in the face of section 103's clear and specific preservation of "the jurisdiction of the courts of the United States for the District of Columbia." [30] Appellees' and the District Court's interpretation of the 1912 and 1945 Acts ignores the unambiguously stated intent of the 1945 Congress to "in no way affect[] property rights and claims as they [then] exist[ed] in [the Alexandria waterfront] area" [31] and renders section 103 of the 1945 Act absolutely meaningless. Since we can discern no reason for the inclusion of section 103, if Congress intended to establish pursuant to sections 101 and 102 a jurisdictional boundary between the District

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[28] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93.

[29] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945).

[30] Act of 31 Oct. 1945, ch. 443, § 103, 59 Stat. 552.

[31] H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945).

of Columbia and Virginia *for all purposes*, we reject the construction of the 1912 and 1945 Acts adopted by the District Court.[32]

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[32] *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955); *City of New York v. Train*, 494 F.2d 1033, 1049-50 (D.C. Cir. 1974), *aff'd*, 420 U.S. 35 (1975); *Wilderness Soc'y v. Morton*, 479 F.2d 842, 855-56 (D.C. Cir.), *cert. denied*, 411 U.S. 917 (1973).

We perplexingly note that the judge, who in the instant case granted appellees' motion to dismiss, apparently agreed, in an earlier unreported memorandum opinion, with the construction of section 103 now advocated by the United States and adopted by this court. In *United States v. Robinson Terminal Warehouse, Inc.*, Civil No. 1903-73 (D.D.C. 1973), he wrote,

> The Court's jurisdiction is based upon 28 U.S.C. § 1345 (1970) (United States as plaintiffs); the Act of April 27, 1912, ch. 96, 37 Stat. 93; and the Act of October 31, 1945, ch. 443, 59 Stat. 552 (set out as a note under D.C. CODE ANN. § 1-101 (1973)).
>
> The cited Act of October 31, 1945, was designed to quiet forever the dispute over the boundary between the District of Columbia and the Commonwealth of Virginia. Section 101 of that Act describes the boundary line . . .; Section 102 cedes to Virginia the land lying on the Virginia side of the line so fixed; and Section 103 reserves certain rights to the United States. It is this last section which is important to the discussion of jurisdiction.
>
> Section 103 expressly confers jurisdiction upon "the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791 . . . ." The phrase "said Act" refers to the Act of April 27, 1912, ch. 96, § 1, 37 Stat. 93 . . . .
>
> [Defendant] Robinson argues that the 1912 Act limits this Court's jurisdiction solely to cases concerning land "in the District of Columbia." Thus since the property in question here lies within the boundaries of the Commonwealth of Virginia, this Court lacks jurisdiction, and

Recognizing that our decision may require the United States District Court for the District of Columbia to rule on several questions of Virginia landlord-tenant law

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the action lies only in the United States District Court for the Eastern District of Virginia.

Assuming, *arguendo*, that the disputed property does lie within Virginia's boundaries, the Robinson argument ignores the plain statutory language of Section 103, which clearly grants jurisdiction to this Court to hear quiet title cases concerning the Potomac River generally *and* reaffirms this Court's jurisdiction to hear quiet title cases concerning the Potomac River generally *and* reaffirms this Court's jurisdiction to hear quiet title actions concerning "land or water in the District of Columbia in, under, and adjacent to the Potomac River . . . ." *See* Act of October 31, 1945, ch. 443, § 103, 59 Stat. 552.

It appears to this Court that what Congress attempted to do in the 1945 Boundary Act was to establish once and for all a clear and definite boundary between the District of Columbia and Virginia, based on all the relevant data available to it at that time. Section 103, clause 3, of that Act . . . was clearly intended by Congress to vest in the District Court for the District of Columbia original and exclusive jurisdiction to hear and decide quiet title cases which were sure to follow in the wake of the new legislation. The remainder of the language in Section 103, clause 3, that following the comma after "River", *i.e.*, "and other lands as described by said Act (the 1912 Act) below the mean high-water mark of January 24, 1791 . . .", obviously reaffirms this Court's grant of jurisdiction contained in the Act of April 27, 1912, to wit, to hear and decide those quiet title cases concerning the Potomac River *and* land located in the District of Columbia. Thus, all the cases concerning Potomac River disputes are cognizable in this Court. Any other construction of clause 3 in Section 103 would violate that principle of statutory construction which dictates that all words in a statute are to be assigned meaning and that nothing therein is to be construed as duplicative or surplusage. *G. Sutherland*, 2 *Statutory Construction* § 4705 (3d ed. 1943).

[Continued]

while it ponders the ultimate resolution of this title dispute,[33] we, nevertheless, cannot ignore the express intent of Congress that this dispute be resolved in the United States courts for the District of Columbia. Although the federal district courts for the Eastern District of

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[33] [Continued]

> This Court accordingly assumes jurisdiction of the suit.

Government Brief, Appendix B, at 30-32. We find it difficult to reconcile what we feel was a correct statement of the law in *Robinson Terminal* with the following excerpt from the same District Judge's later opinion in the instant case:

> The Government would seek to rebut what to this Court are the plain terms of the 1945 Act by saying that if Congress intended that an action such as this one was to be litigated in Virginia, Congress would not have needed or used the language it employed in § 103. But that position violates the well-known principle of statutory construction that all words in a statute are to be assigned a meaning and not to be considered mere surplusage. *See* 2 G. Sutherland, Statutory Construction § 4705 (3d ed. 1943).

386 F. Supp. at 1292.

[33] *E.g.*, the rent dispute between the City of Alexandria and Old Town Yacht Basin, Inc., both appellees in the instant proceeding, wherein we entered an order on 26 March 1976 enjoining the City of Alexandria

> from taking any action to remove appellee, Old Town Yacht Basin, Inc., from the premises which it now occupies until further order of the Court on condition that appellee Old Town Yacht Basin, Inc., shall pay rent of $300.00 each month, when and as the same becomes due, to the City of Alexandria with the requirement that such funds be kept separate from other city funds until further order of this Court.

Consistent with our disposition of the instant case, we will vacate this order upon issuance of the mandate to the District Court. At that time the matter will be in the hands of the District Court.

Virginia would probably have more expertise in handling these ancillary matters involving Virginia law, federal tribunals are not free to pick and choose among the various functions assigned to them by Congress.

In contrast to this recognized problem, we also note that the goals of judicial economy would not be furthered by splitting this dispute into two separate actions, as the District Court chose to do. Clearly, it is not an efficient utilization of scarce judicial resources to split a dispute involving the same or similar evidence and legal principles into two separate actions, which may eventually require the attention of two federal district courts, two United States courts of appeals, and then, possibly, the Supreme Court.

For these reasons we conclude that the District Court's dismissal of this action for lack of jurisdiction was based on an erroneous construction of the governing jurisdictional statutes. Accordingly, for a trial on the merits in the District Court this case is

Reversed and Remanded.

the late war, shall be continued and paid by the United States from the fourth day of March last, for the space of one year, under such regulations as the President of the United States may direct.

Approved, July 16, 1790.

Statute II. July 16, 1790.

Chap. XXVIII.—*An Act for establishing the temporary and permanent seat of the Government of the United States.*

Act of March 3, 1791, ch. 17. District on the Potomac accepted for permanent seat of government, and state laws, when to cease therein.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the United States. *Provided nevertheless*, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

President to appoint commissioners for locating the same.

Sec. 2. *And be it further enacted*, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located, shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

Who may purchase or accept grants of land; and, prior to Dec. 1800, provide buildings, for the accommodation of Congress.

Sec. 3. *And be it [further] enacted*, That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States, and according to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States.

Expense thereof, how to be defrayed.

Sec. 4. *And be it [further] enacted*, That for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

Prior to first Monday in Dec. next, seat of government to be removed to Philadelphia, and so remain until the year 1800.

Sec. 5. *And be it [further] enacted*, That prior to the first Monday in December next, all offices attached to the seat of the government of the United States, shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the state of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

In December, 1800, seat of government to be removed to district accepted by this act. Act of May 6, 1796, chap. 21.

Sec. 6. *And be it [further] enacted*, That on the said first Monday in December, in the year one thousand eight hundred, the seat of the government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said seat of government, shall accordingly be removed thereto by their respective holders, and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Approved, July 16, 1790.

BEST COPY AVAILABLE

Exhibit C

$73,000 of stock invested for Senecas of New York to be cancelled, and the amount placed for the credit of said Indians.

SEC. 2. *And be it further enacted*, That the sum of seventy-five thousand dollars, heretofore paid to the President of the United States under the treaty made with the Seneca Indians of New York, in the year eighteen hundred and forty-two, for the benefit of said Indians, and the stock in which the same may have been invested, shall be, and the same is hereby taken absolutely to the use of the United States, in accordance with the prayer of said Indians; and it shall be the duty of the Secretary of the Treasury to cancel the said stock, and place upon the books of his department the amount of seventy-five thousand dollars to the credit of said Indians, upon which sum interest shall thereafter be paid to them, at the rate of five per centum per annum: *Provided*, That any interest which may be due and unpaid on said stock, at the time of its cancellation, shall be forthwith paid to them.

5 per cent. interest to be paid them.

President to receive from Ontario Bank, any U. S. stock and money held by it for benefit of the Senecas, and to cancel it, and to place the amount to the credit of the said Indians.

SEC. 3. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to receive from the Ontario Bank of New York any stock of the public debt of the United States, or moneys which the said bank may hold in trust for the said Senecas, whenever the said Indians, or other persons whose consent may be necessary, shall in proper form authorize the transfer; and to cause the stock to be cancelled, and the amount thereof, and of any moneys which he may receive, to be deposited in the treasury to the credit of said Indians, upon which amount interest shall thereafter be paid to them at the rate of five per centum per annum, until Congress may direct the principal in this and the preceding section to be paid to the Indians.

5 per cent. interest to be paid them.

Secretary of War to ascertain what annuities have been withheld from said Senecas, to take testimony, &c.

SEC. 4. *And be it further enacted*, That the Secretary of War be, and he is hereby, required to ascertain what annuities or moneys have been wrongfully withholden from the said Senecas by the late sub-agent of the United States, and so lost to them; and to that end the said Secretary is authorized, if in his judgment it shall be necessary or expedient so to do, to issue a commission or commissions to some discreet person or persons, to be selected by him, to take testimony in the premises, and to report the same to Congress; and, to defray any expenses which may be incurred in the execution of the provisions of this section, a sum not exceeding five hundred dollars is hereby appropriated.

$500 appropriated to defray the necessary expenses.

APPROVED, June 27, 1846.

CHAP. XXXV.—*An Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia.*

July 9, 1846.

Preamble.

Whereas, no more territory ought to be held under the exclusive legislation given to Congress over the District which is the seat of the General Government than may be necessary and proper for the purposes of such a seat; and whereas, experience hath shown that the portion of the District of Columbia ceded to the United States by the State of Virginia has not been, nor is ever likely to be, necessary for that purpose; and whereas, the State of Virginia, by an act passed on the third day of February, eighteen hundred and forty-six, entitled "An act accepting by the State of Virginia the County of Alexandria, in the District of Columbia, when the same shall be receded by the Congress of the United States," hath signified her willingness to take back the said territory ceded as aforesaid: Therefore —

Alexandria county retroceded to Virginia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, with the assent

of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.

This act not to be construed so as to vest in Virginia any right of property in the custom-house &c. post office, &c.

SEC. 2. *And be it further enacted*, That nothing herein contained shall be construed to vest in the State of Virginia any right of property in the custom-house and post-office of the United States within the town of Alexandria, or in the soil of the territory hereby receded, so as to affect the rights of individuals or corporations therein, otherwise than as the same shall or may be transferred by such individuals or corporations to the State of Virginia.

Existing laws and jurisdiction to continue until Virginia shall provide by law for the extension of her jurisdiction, &c.

SEC. 3. *And be it further enacted*, That the jurisdiction and laws now existing in the said territory, ceded to the United States by the State of Virginia, as aforesaid, over the persons and property of individuals therein residing, shall not cease or determine until the State of Virginia shall hereafter provide, by law, for the extension of her jurisdiction and judicial system over the said territory hereby receded.

Assent of the people of Alexandria town and county required.

SEC. 4. *And be it further enacted*, That this act shall not be in force until after the assent of the people of the county and town of Alexandria shall be given to it in the mode hereinafter provided. Immediately after the close of the present session of Congress, the President of the United States shall appoint five commissioners, (any three of whom may act,) citizens of the said town or county of Alexandria, and freeholders within the same, who shall be sworn, before some justice of the peace in and for the said town or county, to discharge the duties hereby imposed upon them faithfully, impartially, and to the best of their ability. These commissioners, or any of them, shall proceed, within ten days after they are notified of their appointment, to fix upon the time, place, and manner, of taking the vote within the town or county of Alexandria, and shall give notice of the same by advertisement in the newspapers of the said town. And on the day and at the place so appointed, every free white male citizen of the United States, who shall have resided in said county of Alexandria for six months preceding the time when he offers his vote, insane persons and paupers excepted, shall vote *viva voce* upon the question of accepting or rejecting the provisions of this act. The said commissioners shall preside when this vote is taken, and decide all questions arising in relation to the right of voting under this act. Within three days after this vote is taken as aforesaid, the said commissioners shall make out three statements of the result of this poll, upon oath, and under their seals. Of these, one shall be transmitted to the President of the United States, one to the Governor of the Commonwealth of Virginia, and one shall be deposited in the clerk's office of the county court of Alexandria. If a majority of the votes so given shall be cast against accepting the provisions of this act, then it shall be void and of no effect; but if a majority of the said votes should be in favor of accepting the provisions of this act, then this act shall be in full force, and it shall be the duty of the President of the United States to inform the Governor of Virginia that this act is in full force and effect, and to make proclamation of the fact.

Manner of ascertaining the sense of the people of said town and county.

Proclamation to be made.

Post, Appendix.

Right of property in the court-house and jail to be conveyed to the Governor of Virginia for use of said town and county.

SEC. 5. *And be it further enacted*, That, in such case, the right of property in the half square in Alexandria on which stands the court-house, bounded by Columbus, Queen, and Princess Streets, and the half square on which stands the jail, bounded by Princess, St. Asaph, and Pitt Streets, shall be conveyed to the Governor of Virginia, and his successors, for the use of the county and corporation of Alexan-

dria forever; and the Solicitor of the Treasury of the United States is hereby authorized and required, in the name and on the behalf of the United States, to make all the proper and necessary conveyances for that purpose.

The debt of the corporation of Alexandria not to be assumed by Congress.

Sec. 6. *And be it further enacted*, That Congress will in no event assume and pay the debt, or any part thereof, now due by the corporation of the city of Alexandria.

Approved, July 9, 1846.

July 11, 1846.

Chap. XXXVI. — *An Act to authorize the President of the United States to sell the reserved mineral Lands in the States of Illinois and Arkansas, and Territories of Wisconsin and Iowa, supposed to contain Lead Ore.*

All the reserved lead mines and contiguous lands in Illinois, Arkansas, Wisconsin, and Iowa, to be exposed to sale.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized, as soon as practicable, to cause the reserved lead mines and contiguous lands in the State of Illinois and Arkansas, and Territories of Wisconsin and Iowa, belonging to the United States, to be exposed to sale, in the same manner that other public lands are authorized by law to be sold, except as hereinafter provided.

Six months' public notice to be given of such sales, with a brief description, &c.

Sec. 2. *And be it further enacted*, That six months' notice of the times and places of said sales shall be given in such newspapers of general circulation, in such of the States as the President may think expedient, with a brief description of the mineral regions of the States of Illinois and Arkansas, and Territories of Wisconsin and Iowa, and of the lands to be offered for sale; showing the number and localities of the different mines now known, the probability of discovering others, the quality of the ore, the facilities of working it, the further facilities (if any) for manufactories of shot, sheet lead, and paints, and the means and expense of transporting the whole to the principal markets in the United States: *Provided*, That the said lands shall not be subject to the rights of preemption until after the same have been offered at public sale and subject to private entry.

Proviso as to preemption.

Any tract containing a mine or mines of lead ore to be sold in such legal subdivisions as will include such mine or mines.

No bid less than $2 50 per acre to be taken within one year.

Sec. 3. *And be it further enacted*, That upon satisfactory proof, made to the register and receiver of the proper land office, that any tract or tracts of said lands contain a mine or mines of lead ore, actually discovered and being worked, then, and in that case, the same shall be sold in such legal subdivision or subdivisions as will include such mine or mines; and no bid shall be received therefor at a less rate than the sum of two dollars and fifty cents per acre; and if such tract or tracts shall not be sold at such public sale, at such price, nor shall be entered at private sale within twelve months thereafter, then the same shall be subject to sale as other lands: *Provided*, That no legal subdivision of any of said lands, upon which there may be an outstanding lease or leases from the Government of the United States, or their authorized agent, unexpired and undetermined, shall be sold until after the determination of such lease or leases by effluxion of time, voluntary surrender, or other legal extinguishment thereof.

Leased subdivisions not to be sold until expiration of lease.

Approved, July 11, 1846.

July 13, 1846.

Chap. XXXVII. — *An Act to legalize certain Land Sales made at Chocchuma and Columbus, in the State of Mississippi, and to indemnify the Chickasaws therefor.*

Patents to issue for such sales of land at Choc-

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it may and shall be lawful for patents to be issued, as in ordinary cases, for such

SEC. 3. That the rights and privileges herein granted shall extend to and inure to the benefit of said El Paso and Southwestern Railroad Company, its successors or assigns, but subject, however, to the conditions, stipulations, and requirements herein set forth. Rights of successors or assigns.

SEC. 4. That any other person or corporation having a franchise for the operation of a railway in the State of Arizona may, upon obtaining a license from the Secretary of War, use the track and other constructions herein authorized to be placed upon the reservation upon paying just compensation; and if the parties concerned can not agree upon the amount of such compensation, the sum or sums to be paid for said use shall be fixed by the Secretary of War. Use by other railways.

SEC. 5. That the right to alter, amend, or repeal this Act is hereby expressly reserved. Amendment.

Approved, April 27, 1912.

CHAP. 95.—An Act To authorize the Port Arthur Pleasure Pier Company to construct a bridge across the Sabine-Neches Canal, in front of the town of Port Arthur.

April 27, 1912.
[H. R. 21960.]
[Public, No. 137.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Port Arthur Pleasure Pier Company, a corporation existing under the laws of the State of Texas, and its assigns, be, and it is hereby, authorized to construct, maintain, and operate a bridge and approaches thereto across the Sabine-Neches Canal, at a point suitable to the interests of navigation, in front of the town of Port Arthur, in the county of Jefferson, in the State of Texas, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March twenty-three, nineteen hundred and six: *Provided*, That the said Port Arthur Pleasure Pier Company is also authorized to cross and occupy with the aforesaid bridge the land owned by the United States adjacent to and along said canal, under such terms and conditions as the Secretary of War may deem equitable and fair to the public. Sabine-Neches Canal. Port Arthur Pleasure Pier Company may bridge, Port Arthur, Tex. Vol. 34, p. 84. Proviso. Right of way.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved. Amendment.

Approved, April 27, 1912.

CHAP. 96.—An Act Providing for the protection of the interests of the United States in lands and waters comprising any part of the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek and lands adjacent thereto.

April 27, 1912.
[H. R. 22542.]
[Public, No. 138.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judgment it is deemed proper, a suit or suits in the Supreme Court of the District of Columbia against all persons and corporations, or others, who may have, or pretend to have, any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the land or water in the District of Columbia in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adjacent thereto, including made lands, flats, and marsh lands. District of Columbia. Title to lands, etc., Potomac and Anacostia rivers and Rock Creek to be determined.

SEC. 2. That the suit or suits mentioned in the preceding section shall be in the nature of a bill in equity, and there shall be made parties defendant thereto all persons and corporations, or others, known to set up or assert any claim or right to or in the land or water in said Parties made defendants in suit.

preceding section mentioned, and against all other persons and corporations, or others, who may claim to have any such right, title, or interest. On the filing of said bill process shall issue and be served, according to the ordinary course of said court, upon all persons and corporations, or others, within the jurisdiction of said court; in case said land is in actual adverse possession to the United States notice shall be served on the parties in actual possession, and public notice shall be given, by advertisement in two newspapers published in the city of Washington, for three weeks successively, of the pendency of said suit, and citing all persons and corporations, or others interested in the subject matter of said suit or in the land or water in this Act mentioned, to appear, at a day named in such notice, in said court to answer the said bill and set forth and maintain any right, title, interest, or claim that any person or corporation, or others, may have in the premises; and the court may order such further notice as it shall think fit to any party in interest.

Service of process.

Adverse possession.

Advertisement of notice.

Jurisdiction of court.

SEC. 3. That the said cause shall then proceed with all practicable expedition to a final determination by said court of all rights drawn in question therein, and the said court shall have full power and jurisdiction by its decrees to determine every question of right, title, interest, or claim arising in the premises and to vacate, annul, set aside, or confirm any claim of any character arising or set forth in the premises; and its decree shall be final and conclusive upon all persons and corporations, or others, parties to the suit, or who shall fail, after public notice as hereinbefore in this Act provided, to appear in said court and litigate his, her, their, or its claim, and they shall be deemed forever barred from setting up or maintaining any right, title, interest, or claim in the premises.

Effect of decree.

Determination of value of title, etc., adverse to United States.

SEC. 4. That if on the final hearing of said cause the said Supreme Court of the District of Columbia shall be of opinion that there exists any right, title, or interest in the land or water in this Act mentioned in any person, or corporation, or others, adverse to the complete and paramount right of the United States, the said court shall forthwith and in a summary way proceed to ascertain the value of any such right, title, interest, or claim, exclusive of the value of any improvement to the property covered by such right, title, or interest made by or under the authority of the United States, and report thereof shall be made to the Congress.

Report to Congress.

Appeal to Supreme Court.

SEC. 5. That from the final decree of the Supreme Court of the District of Columbia, and every part thereof, in the premises, an appeal shall be allowed to the United States, and to any other party in the cause complaining of such decree, to the Supreme Court of the United States, which last-mentioned court shall have full power and jurisdiction to hear, try, and determine the said matter, and every part thereof, and to make final decree in the premises; and the said cause shall, on motion of the Attorney General of the United States, be advanced to the earliest practicable hearing.

Appropriation.

SEC. 6. That for carrying out the provisions of this Act, there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of twenty-five thousand dollars, to be expended only upon the direction and approval of the Attorney General for such purposes as he may deem necessary.

Approved, April 27, 1912.

April 28, 1912.
[H. R. 19212.]
[Public, No. 139.]

CHAP. 97.—An Act Making appropriations for the Diplomatic and Consular Service for the fiscal year ending June thirtieth, nineteen hundred and thirteen.

Diplomatic and consular appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, severally appropriated, in full compensation for

Real-estate holdings.

SEC. 3. The provision contained in the Act incorporating Providence Hospital approved April 8, 1864, limiting the value of the real estate which may be held by the corporation is hereby repealed.

Approved October 29, 1945.

[CHAPTER 443]

AN ACT

October 31, 1945
[H. R. 3220]
[Public Law 208]

To establish a boundary line between the District of Columbia and the Commonwealth of Virginia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—BOUNDARY LINE BETWEEN THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF VIRGINIA

Establishment.

SEC. 101. The boundary line between the District of Columbia and the Commonwealth of Virginia is hereby established as follows:

Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of the Potomac River to Little River, along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.

Territory ceded to Virginia.

SEC. 102. All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however*, That concurrent jurisdiction over the said area is hereby reserved to the United States.

Right, title, or interest of U. S. to designated lands.

SEC. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791; or to limit the authority to make equitable adjustments of conflicting claims as provided for in the Act approved June 4, 1934 (48 Stat. 836).

Jurisdiction of Federal courts.

Adjustment of conflicting claims.
D. C. Code § 8-104.

"Present" mean high-water mark.

SEC. 104. The "present" mean high-water mark shall be construed as the mean high-water mark existing on the effective date of this Act.

Surveys and marks.

SEC. 105. The United States Coast and Geodetic Survey is hereby authorized, empowered, and instructed to survey and properly mark by suitable monuments the said boundary line as described in section 101, and from time to time to monument such sections of said boundary line as may be changed as provided for in section 101; and the necessary appropriations for this work are hereby authorized.

Applicability of Criminal Code to designated areas.
35 Stat. 1142-1145.

SEC. 106. The provisions of sections 272 to 289, inclusive, of the Criminal Code (U. S. C., title 18, secs. 451–468) shall be applicable to such portions of the George Washington Memorial Parkway and of the Washington National Airport as are situated within the Commonwealth of Virginia. Any United States commissioner specially designated for that purpose by the District Court of the United States for the Eastern District of Virginia shall have jurisdiction to try and, if found guilty, to sentence persons charged with petty offenses against the laws of the United States committed on the above-described portions of the said parkway or airport. The probation laws shall be applicable to persons so tried. For the purposes of this section, the term "petty offense" shall be defined as in section 335 of the Criminal Code (U. S. C., title 18, sec. 541). If any person charged with any petty offense as aforesaid shall so elect, however, he shall be tried in the said district court.

"Petty offense."
35 Stat. 1152.

Washington National Airport, jurisdiction.
D. C. Code § 2-1601 (b).

SEC. 107. The State of Virginia hereby consents that exclusive jurisdiction in the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)), title to which is now in the United States, shall be in the United States. The conditions upon which this consent is given are the following and none others: (1) There is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to levy a tax on the sale of oil, gasoline, and all other motor fuels and lubricants sold on the Washington National Airport for use in over-the-road vehicles such as trucks, busses, and automobiles, except sales to the United States: *Provided*, That the Commonwealth of Virginia shall have no jurisdiction or power to levy a tax on the sale or use of oil, gasoline, or other motor fuels and lubricants for other purposes; (2) there is hereby expressly reserved in the Commonwealth of Virginia the jurisdiction and power to serve criminal and civil process on the Washington National Airport; and (3) there is hereby reserved in the Commonwealth of Virginia the jurisdiction and power to regulate the manufacture, sale, and use of alcoholic beverages on the Washington National Airport (as described in sec. 1 (b) of the Act of June 29, 1940 (54 Stat. 686)).

Conditions.

Tax on motor fuels, etc.

Limitation.

Service of process.

Control of liquor traffic.

Subject to the limitation on the consent of the State of Virginia as expressed herein exclusive jurisdiction in the Washington National Airport shall be in the United States and the same is hereby accepted by the United States.

Retroactive effect of Act.

This Act shall have no retroactive effect except that taxes and contributions in connection with operations, sales and property on and income derived at the Washington National Airport heretofore paid either to the Commonwealth of Virginia or the District of Columbia are hereby declared to have been paid to the proper jurisdictions and and Commonwealth of Virginia and the District of Columbia each hereby waives any claim for any such taxes or contributions heretofore assessed or assessable to the extent of any such payments to either jurisdiction.

Any provision of law of the United States or the Commonwealth of Virginia which is to any extent in conflict with this Act is to the extent of such conflict hereby expressly repealed.

When effective.

SEC. 108. This title shall not become effective unless and until the State of Virginia shall accept the provisions thereof.

TITLE II—MISCELLANEOUS

Additional Federal jurisdiction.

54 Stat. 1083.

SEC. 201. Nothing in this Act shall be construed (a) to prevent the acceptance by the United States pursuant to the provisions of section 355 of the Revised Statutes, as amended (40 U. S. C., sec. 255), of such jurisdiction as may be granted by the State of Virginia over any lands to which the United States now has, or may hereafter have, title within the boundaries of the State as established by this Act; or (b) to affect any jurisdiction heretofore obtained by the United States from the State of Virginia over lands adjoining or adjacent to those herein ceded; and all jurisdiction whether partial, concurrent, or exclusive, which Virginia has ceded and which the United States has accepted over any part or parts of the ceded total is hereby expressly retained.

SEC. 202. Section 111 of the Judicial Code (46 Stat. 56; U. S. C., title 28, sec. 192), as amended, is hereby further amended to read as follows:

Virginia judicial districts.

"The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia.

Eastern district.

"The eastern district shall include the territory embraced on the effective date of this Act in the counties of Accomac, Arlington, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York.

Terms of court.

"Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in June and December.

Western district.

"The western district shall include the territory embraced on the effective date of this Act in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.

Terms of court.

"Terms of the district court shall be held at Abingdon on the second Mondays in April and November; at Big Stone Gap on the first Mondays in May and October; at Charlottesville on the first Monday in February and on the Wednesday next after the first Monday in August; at Danville on the fourth Monday in February and on the Wednesday next after the first Monday in September; at Harrisonburg on the third Monday in March and on the fourth Monday in October; at Lynchburg on the first Mondays in June and December; and at Roanoke on the first Mondays in January and July.

Clerk's offices.

"The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, Roanoke, Danville, Charlottesville, Harrisonburg, Big Stone Gap, and Abingdon, which shall be kept open at all times for the transaction of the business of the court."

Approved October 31, 1945.

for every candidate certified from Group B until the list of candidates in Group A is exhausted.

ii. Upon the exhaustion of Group A, candidates shall be certified to requisitioning police departments on the basis of one candidate from Group C for every three candidates certified from Group B, until the candidates in Groups B and C are exhausted. The examination list comprising Group B shall expire six months from the date of this order.

iii. Should a candidate qualify to be placed into Groups A, B or C after exhaustion of the Group for which he is eligible, said Group will be revived for purposes of affording the candidate the position he would have enjoyed.

iv. Upon the exhaustion of Groups A, B and C, candidates shall be certified from Group D. Provided, that the list of candidates comprising Group D shall expire six months from the date of this order.

IV. Should an appointing authority fail to offer an appointment to a candidate certified from Groups A, B, C or D, respondents shall not authorize the requisitioning police department to make any appointment unless said police department has furnished respondents with a written statement of its reason why said candidate was not offered an appointment.

V. The plaintiffs and the Civil Service respondents are severally directed to submit to the Court not later than five months from the date of this order proposed amendments to the April 15, 1973 Consent Decree. Said amendments are to be in such form as to embody the rulings contained on pages 9–10 of the Court's Opinion filed herewith.

VI. To the extent, if any that the temporary injunction issued by the Emergency Judge of this Court on July 15, 1974 is inconsistent with the Opinion filed today that temporary injunction is dissolved.



UNITED STATES of America, Plaintiff,

v.

HERBERT BRYANT, INC., et al., Defendants.

Civ. Nos. 2211–73, 1903–73.

United States District Court, District of Columbia.

Dec. 9, 1974.

Suit by the United States to quiet title to all fast and submerged lands in Virginia or the District of Columbia that lay along specified portion of the waterfront of the City of Alexandria. Various motions were filed, including motions to dismiss for lack of jurisdiction. The District Court, Corcoran, J., held that the court lacked jurisdiction to determine title to any land situated within the Commonwealth of Virginia.

Order accordingly.

1. Courts ⇐444.3(1)

District court for the District of Columbia lacked jurisdiction to hear and determine action by the United States to quiet title to fast and submerged lands situated within the territorial limits of the Commonwealth of Virginia. 28 U.S.C.A. § 1345; Boundary line between District and Virginia, §§ 101 et seq., 103, 202, D.C.C.E. following section 1–101; Act April 27, 1912, 37 Stat. 93.

2. Courts ⇐444.3(1)

Under general legal principles the United States District Court for the Dis-

trict of Columbia cannot exercise in rem jurisdiction over land situated beyond its territorial boundary.

3. Courts ⇐444.3(1)

Proviso of 1945 Act ceding to the Commonwealth of Virginia certain territory situated on the Virginia side of the Potomac River that concurrent jurisdiction over such area was reserved to the United States was inserted only to insure the enforcement of the criminal law as to federal facilities located in Virginia, namely, the George Washington Memorial Highway, the National Airport and the Pentagon; such proviso was neither relevant nor material to jurisdiction of the United States District Court for the District of Columbia to determine suit by the United States to quiet title to lands in Virginia. Boundary line between District and Virginia, §§ 101, 103, D.C.C.E. following section 1–101.

4. District of Columbia ⇐1

Term "said Act" as used in provision of 1945 Act, which governs boundary between the District of Columbia and the Commonwealth of Virginia, that nothing in the 1945 Act was to be construed as limiting right of the United States to establish its title to any of specified lands as provided by 1912 Act or jurisdiction of the courts of United States to hear and determine suits to establish title of the United States in all lands as described by said Act below the mean high-water mark of January 24, 1791, referred to the 1912 Act while the term "lands" referred to were those lands in the District of Columbia as specified by the 1912 Act. Boundary line between District and Virginia, § 103, D.C.C.E. following section 1–101.

See publication Words and Phrases for other judicial constructions and definitions.

5. Statutes ⇐202

All words in a statute are to be assigned a meaning and are not to be considered mere surplusage.

6. Courts ⇐18

It is fundamental that a court has in rem jurisdiction only over lands located within its territorial boundaries.

7. Courts ⇐444.3

Territorial boundary of the United States District Court for the District of Columbia is coterminous with the District of Columbia.

8. District of Columbia ⇐3

Congress has the powers of both a national and local legislative body in the District of Columbia. U.S.C.A.Const. art. 1, § 8, cl. 17.

David W. Miller, Dept. of Justice, Washington, D.C., for plaintiff.

Charles F. Midkiff, (Liaison Counsel) Richmond, Va., for defendants.

MEMORANDUM AND ORDER

CORCORAN, District Judge.

The United States has filed this suit [1] to quiet title to all fast and submerged lands "in Virginia or the District of Columbia" [2] that lie along the waterfront of the City of Alexandria, roughly from Gibbon Street on the south to Slater's Lane on the north, and from the Potomac River on the east to "the January 24, 1791, high water mark of the Potomac River" [3] on the west.

There are some 35 defendants who are the record owners, or interest holders, of such lands.[4]

This Court's jurisdiction is premised upon 28 U.S.C. § 1345 (1970); the Act

1. The main action, United States v. Herbert Bryant, C.A. No. 2211-73, was consolidated with a related matter, United States v. Robinson Terminal Warehouse, C.A. No. 1903-73. In *Robinson Terminal*, this Court granted a preliminary injunction concerning submerged lands in the Potomac River. Memorandum and Order, Nov. 13, 1973. The two cases are conceptually distinct. Therefore by a separate Order entered this date, the Court will sever the two cases.

2. Complaint, para. II.

3. *Id.*

4. Complaint, para. III.

of April 27, 1912, ch. 96, 37 Stat. 93 (the 1912 Act); and the Act of October 31, 1945, ch. 443, 59 Stat. 552 (the 1945 Act) [set out as a note under D.C.Code Ann. § 1-101 (1973)].

At the heart of the matter is the long-standing and troublesome question of where lies the boundary between the District of Columbia and the Commonwealth of Virginia (Virginia), and all of the vexatious problems incident thereto. The greater part of the land in dispute in this action concededly is located within the territorial limits of Virginia; the remainder is said to be situated within the territorial limits of the District of Columbia.

Before the Court at this time are motions (1) to dismiss for lack of jurisdiction; (2) to quash service of process; (3) to transfer the cause to the District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1441(a); and (4) to refer the cause to a master.

[1] For reasons set out hereinafter, the Court holds that it lacks jurisdiction to hear and determine a quiet title action to any land situated within the territorial limits of Virginia.

I

A brief history of the dispute over the boundary between Virginia and the District of Columbia is set out in *Robinson Terminal*,[5] and need not be repeated at this juncture. What is to be gleaned from that history, and what is important for our purposes, is that, the present boundary is the mean high-water mark on the Virginia shore of the Potomac River, except within the environs of the City of Alexandria, where the boundary is the established pierhead line.[6]

Most of the lands claimed by the Government lie shoreward, or westward, of the pierhead line between Gibbon Street on the south to Second Street on the north where the pierhead line terminates. They make up the so-called "Alexandria Waterfront." Clearly these parcels lie within the territorial limits of Virginia.

It would also appear that the District of Columbia Government lays no claim to the area between Second and Third

5. *Robinson Terminal*, *supra* note 1.

6. § 101 of the 1945 Act. It provides:

> The boundary line between the District of Columbia and the Commonwealth of Virginia is hereby established as follows:
>
> Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.

Prior to 1945, the Supreme Court had consistently held that the boundary was the mean high-water mark of the Potomac all along the Virginia shore. *See* United States v. Dern, 289 U.S. 352, 354, 51 S.Ct. 474, 75 L.Ed. 1109 (1933); Smoot Sand & Gravel Corp. v. Washington Airport, 283 U.S. 348, 350, 51 S.Ct. 474, 75 L.Ed. 1109 (1931). *See also* Marine Ry. v. United States, 257 U.S. 47, 63, 42 S.Ct. 32, 66 L.Ed. 124 (1921); Morris v. United States, 174 U.S. 196, 19 S.Ct. 649, 43 L.Ed. 946 (1899).

For relevant decisions of the Court of Appeals of the District of Columbia, *see*, *e. g.*, Herald v. United States, 52 App.D.C. 147, 284 F. 927 (1922); Evans v. United States, 31 App.D.C. 544 (1908).

Streets and that it, accordingly, lies within the territorial limits of Virginia.[7]

As to the remainder, *i. e.*, the parcels lying between Third Street and Slater's Lane, also claimed by the Federal Government, there may be a question as to whether those parcels lie within the territorial limits of the District of Columbia or Virginia. On the present state of the record, the Court is unable to make a firm finding.[8]

[2] The fact that most, if not all, of the property as to which title is claimed is located in Virginia is crucial to an understanding of defendants' motions to dismiss. The Government asserts that the 1912 and 1945 Acts vested this Court with exclusive jurisdiction to resolve the question of title as to all lands claimed regardless of where situated, while the defendants argue the 1912 and 1945 Acts did not confer such exclusive jurisdiction and that, lacking such a statutory grant of jurisdiction, this Court cannot, under general legal principles, exercise *in rem* jurisdiction over land situated beyond its territorial boundary.[9] The Court agrees with the defendants.

We turn to each of the statutes involved.

II

A. *The 1912 Act*

The operative provision of the 1912 Act, § 1, is set out in full in the margin.[10] By its terms, the Act established a judicial framework for the resolution of title disputes between the United States and private parties over the ownership of any lands "*in the District of Columbia* in, under, and adjacent to the Potomac River."[11] Although the legislative history of the 1912 Act indicates that the Act was designed primarily to meet the problems of the Anacostia River reclamation,[12] the Act explicitly establishes this Court as the forum for title

7. This conclusion is supported by a letter from the Commissioner of the District of Columbia to the Chairman of the Senate Committee on the District of Columbia, dated August 24, 1972, in which the Commissioner stated that land below *Third Street* (which is north of Second Street) in Alexandria was "not within the boundaries of the District of Columbia." Hearings on S. 3861 Before the Senate Comm. on the District of Columbia 92d Cong., 2d Sess. 21 (1972) (letter from Graham W. Watt, Assistant to the Commissioner, For the Commissioner, to the Chairman, Senate Committee on the District of Columbia, Aug. 24, 1972). S. 3861, although never enacted into law, was a bill that would transfer to the City of Alexandria the interests of the United States, presumably the same interests claimed in the case at bar, in certain specified property along the Alexandria waterfront, *i. e.*, the same property involved herein except only from Third Street south to Gibbon Street.

8. At oral argument, Government counsel asserted that some of the land in controversy is in the District of Columbia. (Tr. 50.) It will be recalled that the complaint alleges that all the land in question lies in Virginia *or* the District of Columbia. *See* p. 1, *supra*.

9. As noted *supra*, the defendants have also moved to transfer the cause to the District Court for the Eastern District of Virginia, pursuant to 28 U.S.C. § 1441(a), to quash service of process, and to refer the case to a master. In view of the disposition of the case, the Court lacks jurisdiction to decide those motions as they relate to properties lying within the territorial limits of Virginia.

10. Section 1 of the 1912 Act provides

> That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judgment it is deemed proper, a suit or suits in the District Court for the District of Columbia against all persons and corporations, or others, who may have, or pretend to have any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the land or water in the District of Columbia in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adjacent thereto, including marsh lands, flats, and marsh lands.

11. *Id.* (emphasis added).

12. H.R.Rep.No.513, 62 Cong., 2d Sess. 1 (1912). Section 5 of the 1912 Act, providing for direct appeal to the Supreme Court, has been repealed. *See* United States v. Ball, 319 U.S. 521, 63 S.Ct. 1278, 87 L.Ed. 1555 (1943).

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disputes concerning land situated in the District of Columbia—and only in the District of Columbia. The Government recognizes the applicability of the 1912 Act to "land in the District of Columbia" only, but argues that the 1945 Act extended this Court's jurisdiction to the lands now in controversy.

B. *The 1945 Act*

[3] We have previously alluded to § 101 of the 1945 Act.[13] It is § 103 of the Act, however, to which we must look for a resolution of this dispute.

§§ 103 provides:

> Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line described in section 101; or to limit the right of the United States to establish its title to any of said lands as provided by (the 1912 Act); *or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791*; . . . . (Emphasis added.)

It is the Government's position that § 103 of the 1945 Act explicitly reserves exclusive jurisdiction in this Court over the disputed lands notwithstanding that they lie within the territorial limits of Virginia because formerly the "very lands here in controversy were within the territorial limits of this Court for quiet title actions brought by the United States," [14] by virtue of the 1912 Act and pertinent decisions of the Supreme Court. The defendants, on the other hand, contend that the 1945 Act does no more than preserve this Court's jurisdiction over lands described in the Act of 1912, *i. e.*, land in the District of Columbia. They bolster this assertion by noting that Section 202 of the 1945 Act extends the jurisdiction of the District Court for the Eastern District of Virginia over the area within which the disputed lands lie, and that it would be unreasonable to deprive that Court of jurisdiction over such lands.

[4] The Court's view of § 103 is that it is a legislative reaffirmation of the 1912 Act, that the term "said Act" clearly refers to the 1912 Act, and that the "lands" referred to in § 103 are those lands "in the District of Columbia" as specified by the 1912 Act. This conclusion is consistent with the terms of § 202, which amended the then-Judicial Code so as to embrace within the boundaries of the District Court for the East-

13. In the arguments and briefs, § 102 was also alluded to from time to time as having some bearing upon jurisdiction.

§ 102 states:

> All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in Section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State of Virginia: *Provided, however*, That concurrent jurisdiction over the said area is hereby reserved to the United States.

It is clear however that the phrase "concurrent jurisdiction over the said area is hereby reserved to the United States" was inserted only to ensure the enforcement of the criminal law as to Federal facilities located physically in Virginia, namely, the George Washington Memorial Highway, the National Airport and the Pentagon, and that it is not relevant or material to the present controversy. *See* H.R.Rep.No.595, 79th Cong., 1st Sess. 3–4 (1945) (hereinafter cited as 1945 House Report) (letter from the Attorney General to the Chairman of the House Committee on the District of Columbia, Oct. 8, 1943). *See also* S.Rep.No.598, 79th Cong., 1st Sess. 3–4 (1945).

14. Plaintiff's Memorandum in Opposition to Motions to Dismiss, Transfer, and Quash 4. The Government's reference to S.Rep.No. 907, 62d Cong., 2d Sess. 54 (1912) begs the question, for that report concerns a commission to investigate the title of the United States to lands *in the District of Columbia*.

ern District of Virginia the land ceded to Virginia by §§ 101 and 102 of the 1945 Act.[15]

[5] The Government would seek to rebut what to this Court are the plain terms of the 1945 Act by saying that if Congress intended that an action such as this one was to be litigated in Virginia, Congress would not have needed or used the language it employed in § 103. But that position violates the well-known principle of statutory construction that all words in a statute are to be assigned a meaning and not to be considered mere surplusage. *See* 2 G. Sutherland, Statutory Construction § 4705 (3d ed. 1943).

[6] Further, the position of the Government would represent a drastic departure from that fundamental principle of law that a Court has *in rem* jurisdiction only over lands located within its territorial boundaries. *See, e. g.*, Durfee v. Duke, 375 U.S. 106, 115, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963); Fall v. Eastin, 215 U.S. 1, 11–12, 30 S.Ct. 3, 54 L.Ed. 65 (1909); Huntington v. Attrill, 146 U.S. 657, 669, 13 S.Ct. 224, 36 L.Ed. 1123 (1892); Sebold v. Sebold, 143 U.S.App.D.C. 406, 411, 444 F.2d 864, 869 (1971). "Following the example set in the First Judiciary Act and consistently adhered to since, (Federal District Courts) do not . . . extend across state lines." C. Wright, Federal Courts § 2, at 6 (2d ed. 1970).

[7] In creating this District Court, then, Congress has recognized that principle by conferring on it jurisdiction only over land lying within the territorial boundaries of this district.[16] It is reasonable to assume that if, as the Government urges, the Congress had intended such a drastic departure from that fundamental principle of law, in order to give the Federal Court in the District of Columbia *in rem* jurisdiction over land in Virginia, it would have explicitly so provided.

[8] This is not to say that Congress could not have legislated that this Court has exclusive jurisdiction in the cases at bar,[17] but in the absence of such explicit language, this Court should hesitate to arrogate jurisdiction unto itself.[18]

15. *See also* 1945 House Report 2:

> In order that there may be no question that the jurisdiction of the Federal courts in Virginia extends over this newly added territory, the act of July 1, 1910, specifying the territories embraced in these counties, has been rewritten so as to strike out the words "first day of July 1910" and insert in lieu thereof "effective date of this act."

Cf. Hearings on H.R. 9670 Before the House Judiciary Committee, 74th Cong., 2d Sess., ser. 13, at 58 (1936), where the Special Assistant to the Attorney General, Henry H. Glassie, speaks of private parties settling their claims against the Federal Government for land on the Virginia shore of the Potomac in "the courts of competent jurisdiction." "This statement, in 1936, was made at the time when only the 1912 Act was on the statute books. Therefore, it is reasonable to assume that if, in 1936, there were "courts of competent jurisdiction," as opposed to only one court, *i. e.*, this Court, as urged by the Government, then after the 1945 Act was passed, the same situation would obtain since the ceded property is now in Virginia.

16. The territorial boundary of this Court is, obviously, coterminous with the District of Columbia. Tonco Shirakura v. Royall, 89 F. Supp. 713, 715 (D.D.C.1949).

17. In the United States v. Union Pacific R.R., 98 U.S. 569, 603, 25 L.Ed. 143 (1878), the Court said:

> . . . that, with the exception of the Supreme Court the authority of Congress, in creating courts and conferring on them all or much or little of the judicial power of the United States, is unlimited by the Constitution.

Moreover, Congress has the powers of both a national and local legislative body in the District of Columbia. U.S.Const. art. I, § 8, cl. 17. *See* District of Columbia v. John R. Thompson Co., 346 U.S. 100, 108, 73 S.Ct. 1007, 97 L.Ed. 1480 (1953); O'Donoghue v. United States, 289 U.S. 516, 545, 53 S.Ct. 740, 77 L.Ed. 1356 (1933).

Compare the jurisdiction of the District Court for the District of Columbia under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970), as amended, which of course, is not an *in rem* proceeding.

18. Although pragmatic considerations are not strictly relevant to the narrow question of jurisdiction, or the lack thereof, it is foreseeable that if this Court should retain jurisdiction it would become involved in a myriad of ancillary claims and cross-claims concerning conveyances, taxes, insurance, leaseholds, rents, etc., all involving Virginia laws, customs and practices, and Virginia citizens. To

III

In light of the above, the Court holds that it is without subject matter jurisdiction to adjudicate this controversy as to any land that lies within the territorial limits of the Commonwealth of Virginia. It does, of course, have jurisdiction in any suit involving any land within the District of Columbia.

To the end that the Court may enter appropriate and explicit orders as to each parcel of land involved in the case at bar, the plaintiff is hereby directed to file with the Clerk of this Court, and to serve on all defendants, within 15 days of the date of this Order, a statement as to which of the defendants are record owners or interest holders of (a) claimed lands known or alleged to lie within the territorial boundaries of the Commonwealth of Virginia, and (b) claimed lands known or alleged to lie within the territorial boundaries of the District of Columbia.

So ordered.



Robert DE SALVO, Plaintiff,

v.

Michael J. CODD, Individually, and as Police Commissioner of the City of New York, et al., Defendants.

No. 74 Civ. 2055.

United States District Court,
S. D. New York.
Dec. 23, 1974.

Lessee and operator of theater brought action for declaration that New York's criminal and civil antiobscenity statutes were unconstitutionally vague and overbroad and for an injunction against enforcement of both statutes. A Three-Judge Federal District Court, Robert J. Ward, J., held that action was not a case where abstention would be appropriate, that what is enjoinable as obscenity under New York civil antiobscenity statute is the same as what is obscene under New York criminal statute, and that New York civil antiobscenity statute is not on its face so unconstitutionally vague and overbroad that it cannot be enforced.

Complaint dismissed.

Oakes, Circuit Judge, filed a dissenting opinion.

1. Courts ⇐370(6)

Paradigmatic circumstance in which it may be appropriate for a federal court to invoke abstention doctrine is when resolution of federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law; however, abstention does not follow automatically from confrontation with an ambiguity in state law; rather what is required is a judicious exercise of discretion.

2. Courts ⇐260.4

Determination that special circumstances, requisite for application of abstention doctrine, exist can only be made after balancing of all relevant factors and competing policies on a case-by-case basis.

3. Courts ⇐260.4

Civil rights action for declaration that New York's criminal and civil antiobscenity statutes were unconstitutionally vague and overbroad and for an injunction against enforcement of both

date, in the course of this litigation the Court on two separate occasions has been asked to concern itself in two landlord-tenant disputes between co-defendants. Further, one defendant has moved for leave to file a third-party complaint which raises a separate and discrete question of the possible liability of those conveying the lands in controversy to the current record holders or interest holders. It is difficult to conceive that Congress intended that a Federal Court in the District of Columbia would decide these essentially local disputes.

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